

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - February 7, 2018

RUTH C. BALKIN, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
JOSEPH J. MALTESE
FRANCESCA E. CONNOLLY, JJ.

2016-09445

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Carlton Brown, appellant.

(Ind. No. 15-00756)

Gerald Zuckerman, Croton-on-Hudson, NY, for appellant.

Anthony A. Scarpino, Jr., District Attorney, White Plains, NY (Raffaelina Gianfrancesco of counsel), for respondent (no brief filed).

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Barry E. Warhit, J.), rendered July 28, 2016, convicting him of manslaughter in the first degree, upon his plea of guilty, and imposing sentence. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which he moves for leave to withdraw as counsel for the appellant.

ORDERED that the motion of Gerald Zuckerman for leave to withdraw as counsel is granted, and he is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that Randall Richards, 1428 Midland Avenue, Suite 6, Bronxville, NY, 10708, is assigned as counsel to prosecute the appeal; and it is further,

ORDERED that the respondent is directed to furnish a copy of the certified transcript of the proceedings to the appellant's new assigned counsel; and it is further,

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ORDERED that new counsel shall serve and file a brief on behalf of the appellant within 90 days of the date of this decision and order on motion and the respondent shall serve and file its brief within 30 days after the brief on behalf of the appellant is served and filed. By prior decision and order on motion of this Court dated January 24, 2017, the appellant was granted leave to prosecute the appeal as a poor person, with the appeal to be heard on the original papers, including a certified transcript of the proceedings, and on the briefs of the parties, who were directed to file nine copies of their respective briefs and to serve one copy on each other.

In reviewing an attorney's motion to be relieved pursuant to *Anders v California* (386 US 738), this Court must first “satisfy itself that the attorney has provided the client with a diligent and thorough search of the record for *any* arguable claim that might support the client's appeal” (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 255, quoting *Person v Ohio*, 488 US 75, 83). As this Court explained in *Matter of Giovanni S.*, “counsel must, at a minimum, draw the Court's attention to the relevant evidence, with specific references to the record; identify and assess the efficacy of any significant objections, applications, or motions; and identify possible issues for appeal, with reference to the facts of the case and relevant legal authority” (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

Here, the brief submitted by the appellant's counsel pursuant to *Anders v California* (386 US 738) was deficient because it failed to analyze potential appellate issues with reference to relevant legal authority or highlight facts in the record that might arguably support the appeal (*see People v Randolph*, 156 AD3d 818; *People v Rivera*, 142 AD3d 512; *People v Parker*, 135 AD3d 966, 968; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 256). Since the brief does not demonstrate that assigned counsel fulfilled his obligations under *Anders v California* (386 US 738), we must assign new counsel to represent the appellant (*see People v Sedita*, 113 AD3d 638, 640; *People v McNair*, 110 AD3d 742, 743; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

BALKIN, J.P., CHAMBERS, ROMAN, MALTESE and CONNOLLY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court