

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

D54817  
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Submitted - November 20, 2017

MARK C. DILLON, J.P.  
JOHN M. LEVENTHAL  
HECTOR D. LASALLE  
VALERIE BRATHWAITE NELSON, JJ.

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2015-06035

DECISION & ORDER ON MOTION

The People, etc., respondent,  
v Edgar Lugo, appellant.

(Ind. No. 14-00663)

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Thomas R. Villecco, Jericho, NY, for appellant.

David M. Hoovler, District Attorney, Middletown, NY (Elizabeth L. Schulz of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Jeffrey G. Berry, J.), rendered February 10, 2015, convicting him of assault 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 Thomas R. Villecco 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 Philip H. Schnabel, 33 Schnabel Lane, Chester, NY, 10918, 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,

ORDERED that new counsel shall serve and file a brief on behalf of the appellant

March 14, 2018

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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 March 8, 2016, 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.

Upon this Court's independent review of the record, we conclude that nonfrivolous issues exist, including, but not necessarily limited to, whether the amounts of restitution and surcharge were lawfully imposed (*see* Penal Law § 60.27; *People v Consalvo*, 89 NY2d 140; *People v Fuller*, 57 NY2d 152; *People v Martinez*, 144 AD3d 708), and whether the sentence imposed was excessive (*see generally* *People v Suitte*, 90 AD2d 80). Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252).

DILLON, J.P., LEVENTHAL, LASALLE and BRATHWAITE NELSON, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court