

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

D54929
N/htr

_____AD3d_____

Submitted - February 7, 2018

JOHN M. LEVENTHAL, J.P.
LEONARD B. AUSTIN
JEFFREY A. COHEN
BETSY BARROS
LINDA CHRISTOPHER, JJ.

2016-00994

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Jose Contreras, appellant.

(Ind. No. 13-01273)

Anthony M. Giordano, Ossining, NY, for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Richard A. Molea, J., at plea; Barry Warhit, J., at sentence), rendered January 21, 2015, 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 Anthony M. Giordano for leave to withdraw as counsel is granted, and he is directed to turn over all papers in his possession to the appellant's new counsel assigned herein; and it is further,

ORDERED that Del Atwell, 39 5th Street, East Hampton, NY, 11937, 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,

March 28, 2018

PEOPLE v CONTRERAS, JOSE

Page 1.

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 June 21, 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.

The brief submitted by the appellant's counsel pursuant to *Anders v California* (386 US 738) is deficient because it fails to contain an adequate statement of facts (*see People v Deprosperis*, 126 AD3d 997, 998; *People v Donovan*, 124 AD3d 793, 794; *People v McNair*, 110 AD3d 742; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 256). The statement of facts does not review, in any detail, the Supreme Court's advisements to the appellant regarding the rights he was waiving incident to the plea, the inquiries made of the appellant to ensure that the plea was knowingly and voluntarily entered, or the appellant's responses to any of those advisements and inquiries (*see People v Deprosperis*, 126 AD3d at 998; *People v Donovan*, 124 AD3d at 794; *People v Sedita*, 113 AD3d 638, 639-640). In addition, it does not provide any detail regarding the appellant's factual admission as to the crime charged, the colloquy regarding the appellant's purported waiver of his right to appeal, or the sentencing proceeding (*see People v Ferretti*, 148 AD3d 720, 721; *People v Swenson*, 130 AD3d 848, 849; *People v Sedita*, 113 AD3d at 639-640). Since the brief does not demonstrate that assigned counsel fulfilled his obligations under *Anders v California*, we must assign new counsel to represent the appellant (*see People v Rivera*, 142 AD3d 512, 513; *People v Parker*, 135 AD3d 966, 968; *People v Sedita*, 113 AD3d at 639-640; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

LEVENTHAL, J.P., AUSTIN, COHEN, BARROS and CHRISTOPHER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court