

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

D54953
G/htr

_____AD3d_____

Submitted - November 20, 2017

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

2016-01239

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Tyrone McCalla, appellant.

(Ind. No. 1212/14)

Bruce R. Bekritsky, Mineola, NY, for appellant.

Madeline Singas, District Attorney, Mineola, NY (Sarah S. Rabinowitz of counsel;
Matthew C. Frankel on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Christopher Quinn, J.), rendered January 5, 2016, convicting him of burglary in the second degree (three counts), grand larceny in the third degree, criminal mischief in the second degree, and criminal mischief in the fourth degree (two counts), 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 Bruce R. Bekritsky 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 Thomas R. Villecco, 366 North Broadway, Suite 410, Jericho, NY, 11753, 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

April 4, 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 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 analyze potential appellate issues or highlight facts in the record that might arguably support the appeal (*see People v Rivera*, 142 AD3d 512; *People v Parker*, 135 AD3d 966, 968; *People v McNair*, 110 AD3d 742, 743; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 256). Assigned counsel failed to draw the Court's attention to any "significant objections, applications, or motions" regarding the hearing on the defendant's pretrial suppression motion (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258; *see People v Carlos*, 126 AD3d 911, 912). 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, 639-640; *People v McNair*, 110 AD3d 742; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

Moreover, upon this Court's independent review of the record, we conclude that nonfrivolous issues exist, including, but not necessarily limited to, whether the Supreme Court properly denied the defendant's pretrial suppression motion (*see People v Carlos*, 126 AD3d at 913; *People v Frazier*, 124 AD3d 909, 910; *People v Hardman*, 110 AD3d 917, 918), and whether the sentence imposed was excessive (*see generally People v Suitte*, 90 AD2d 80).

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

ENTER:



Aprilanne Agostino
Clerk of the Court