

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

D55371
G/htr

_____AD3d_____

Submitted - April 18, 2018

MARK C. DILLON, J.P.
SANDRA L. SGROI
SYLVIA O. HINDS-RADIX
VALERIE BRATHWAITE NELSON
ANGELA G. IANNACCI, JJ.

2016-03298

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Frank A. Polk, appellant.

(Ind. No. 15-00464)

Alex Smith, Middletown, NY, for appellant.

David M. Hoovler, District Attorney, Middletown, NY (Andrew R. Kass of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Edward T. McLoughlin, J.), rendered March 16, 2016, convicting him of assault in the second degree and menacing in the second 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 Alex Smith for leave to withdraw as counsel for the appellant 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 Joseph E. Ruyack, 3 Twin Brooks Drive, 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

May 16, 2018

PEOPLE v POLK, FRANK A.


Page 1.

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 May 17, 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 and fails to analyze potential appellate issues or highlight facts in the record that might arguably support the appeal (*see People v McNair*, 110 AD3d 742; *People v Singleton*, 101 AD3d 909, 910; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 256). The statement of facts does not review, in any detail, the County Court's advisements to the defendant regarding the rights he was forfeiting, the inquiries made of the defendant to ensure that the plea was knowingly and voluntarily entered, or the defendant's responses to any of those advisements and inquiries (*see People v Deprosperis*, 126 AD3d 997, 998; *People v Donovan*, 124 AD3d 793, 794; *People v Sedita*, 113 AD3d 638, 639-640). In addition, it does not provide any detail regarding the defendant's factual admission as to the crimes charged or the colloquy regarding the defendant's purported waiver of his right to appeal (*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).

DILLON, J.P., SGROI, HINDS-RADIX, BRATHWAITE NELSON and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court