

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

D55589
G/htr

_____AD3d_____

Submitted - April 18, 2018

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

2016-13060

DECISION & ORDER ON MOTION

The People, etc., respondent, v Juan Miguel
Lopez, appellant.

(Ind. No. 196/16)

Stephen R. Mahler, Kew Gardens, NY, for appellant.

Madeline Singas, District Attorney, Mineola, NY (Cristin N. Connell of counsel;
Matthew C. Frankel on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Jerald S. Carter, J.), rendered September 16, 2016, convicting him of robbery in the third 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 defendant.

ORDERED that the motion of Stephen R. Mahler for leave to withdraw as counsel for the defendant 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 Michael A. Fietcher, P.O. Box 1107, Bellmore, NY, 11710, 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 defendant's new assigned counsel; and it is further,

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

June 13, 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 defendant is served and filed. By prior decision and order on motion of this Court dated February 24, 2017, the defendant 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 defendant's right to counsel was adversely affected by his attorney taking a position adverse to the defendant at sentencing (*see People v Mitchell*, 21 NY3d 964, 967; *People v Loaiza*, 142 AD3d 564, 565; *People v Illescas*, 126 AD3d 915, 915-916; *People v Elting*, 2 AD3d 455, 456). Accordingly, the assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *People v Vasquez*, 70 NY2d 1, 4).

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

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court