

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

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Submitted - May 16, 2018

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

2016-12070

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Rusty Anderson, appellant.

(Ind. No. 16-00527)

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 (Nicholas DeRosa, J.), rendered November 3, 2016, convicting him of criminal sexual act 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 Thomas R. Villecco 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 John R. Lewis, 36 Hemlock Drive, Sleepy Hollow, NY, 10591, 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,

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ORDERED that new counsel shall serve and file a brief on behalf of the appellant within 90 days 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 April 25, 2017, 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 our independent review of the record, we conclude that there are nonfrivolous issues in this case, including, but not necessarily limited to, whether the purported waiver of the defendant's right to appeal was valid (*see People v Bradshaw*, 18 NY3d 257, 267; *People v Moyett*, 7 NY3d 892, 892-893; *People v Pena-Gonzalez*, 158 AD3d 823; *People v Johnson*, 135 AD3d 960; *People v Guarchaj*, 122 AD3d 878, 879; *People v Pelaez*, 100 AD3d 803) and, if such waiver is found to be invalid, 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).

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

ENTER:


Aprilanne Agostino
Clerk of the Court