

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

D55691
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_____AD3d_____

Submitted - May 16, 2018

REINALDO E. RIVERA, J.P.
ROBERT J. MILLER
COLLEEN D. DUFFY
HECTOR D. LASALLE, JJ.

2017-00598

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Edward K. Solomon, appellant.

(Ind. No. 889-16)

Laurette D. Mulry, Riverhead, NY (Alfred J. Cicale of counsel), for appellant.

Timothy D. Sini, District Attorney, Riverhead, NY (Michael J. Miller of counsel),
for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Suffolk County (John B. Collins, J.), rendered November 30, 2016, convicting him of criminal sale of a controlled substance 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 she moves for leave to withdraw as counsel for the appellant.

ORDERED that the motion of Laurette D. Mulry for leave to withdraw as counsel for the appellant is granted, and she is directed to turn over all papers in her 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,

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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 November 13, 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.

In reviewing an attorney's motion to be relieved pursuant to *Anders v California* (386 US 738), this Court must first be satisfied "that the attorney has provided the client with a diligent and thorough search of the record for any arguable claim that might support the client's appeal" (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 255, quoting *Person v Ohio*, 488 US 75, 83). As this Court explained in *Matter of Giovanni S. [Jasmin A.]*, "counsel must, at a minimum, draw the Court's attention to the relevant evidence, with specific references to the record; identify and assess the efficacy of any significant objections, applications, or motions; and identify possible issues for appeal, with reference to the facts of the case and relevant legal authority" (89 AD3d at 258).

Here, 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 with reference to the relevant legal authority or highlight facts in the record that might arguably support the appeal (*see People v Deprosperis*, 126 AD3d 997, 998; *People v Sedita*, 113 AD3d 638, 639-640; *People v McNair*, 110 AD3d 742, 743; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 256). Since the brief does not demonstrate that assigned counsel has fulfilled her obligations under *Anders v California* (386 US 738), we must assign new counsel to represent the appellant (*see People v Deprosperis*, 126 AD3d at 998; *People v Sedita*, 113 AD3d at 640; *People v McNair*, 110 AD3d at 743; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

RIVERA, J.P., MILLER, DUFFY and LASALLE, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court