

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

D56896
Q/hd

_____AD3d_____

Submitted - June 1, 2018

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
JOSEPH J. MALTESE, JJ.

2017-02582

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Edward Brooks, appellant.

(Ind. No. 1229N-15)

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

Madeline Singas, District Attorney, Mineola, NY (Tammy J. Smiley and Hilda Mortensen of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Jerald S. Carter, J.), rendered February 7, 2017, convicting him of criminal sale of a controlled substance in the third degree (two counts) and criminal possession of a controlled substance in the third degree (two counts), upon a jury verdict, 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 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 Patrick Megaro, 626 RXR Plaza 6th Floor, West Tower, Uniondale, NY 11556 is assigned as counsel to perfect the appeal; and it 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 within 90 days of this decision and order, and the respondent shall serve and file its brief within 30

October 24, 2018

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days after the brief on behalf of the appellant is served and filed. The appellant was granted leave to proceed as a poor person in the Supreme Court, Nassau County, and, pursuant to Correction Law § 168-n(3), his status as a poor person continues on appeal. By prior decision and order on application of this Court dated May 1, 2017, it was ordered that the appeal would 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 assigned counsel pursuant to *Anders v California* (386 US 738) is deficient because it fails to adequately analyze potential appellate issues or highlight facts in the record that might arguably support the appeal (*see People v Stokes*, 95 NY2d 633; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252). The brief does not demonstrate that assigned counsel has fulfilled his obligations under *Anders* (*see People v Gonzalez*, 47 NY2d 606; *People v Parker*, 135 AD3d 966; *People v Woods*, 125 AD3d 699). Since a review of the record by the Appellate Division cannot substitute for "the single-minded advocacy of appellate counsel," we must assign new counsel to prosecute the appeal (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 259, quoting *People v Emmett*, 25 NY2d 354, 356).

Moreover, upon this Court's independent review of the record, we conclude that there are nonfrivolous issues, including, but not necessarily limited to, whether the verdict was supported by the weight of the evidence, whether the defendant's due process rights were violated when he was removed from the courtroom in the presence of the jury and was not permitted to reenter the courtroom for summations or the trial court's jury charge, and whether the defendant received the effective assistance of counsel.

MASTRO, J.P., CHAMBERS, SGROI and MALTESE, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court