

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

D56987
C/htr

_____AD3d_____

Submitted - September 26, 2018

REINALDO E. RIVERA, J.P.
SANDRA L. SGROI
SYLVIA O. HINDS-RADIX
VALERIE BRATHWAITE NELSON
ANGELA G. IANNACCI, JJ.

2016-06547

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Kaheem Cummings, appellant.

(Ind. No. 91/15)

Bruce A. Petito, Poughkeepsie, NY, for appellant.

William V. Grady, District Attorney, Poughkeepsie, NY (Bridget R. Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Craig S. Brown, J.), rendered May 18, 2016, convicting him of robbery in the first 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 Bruce A. Petito for leave to withdraw as counsel 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 A. Cirando, 101 South Salina Street, Suite 1010, Syracuse, NY 13202-1350, is assigned as counsel to perfect 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

December 19, 2018

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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 June 1, 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. The parties are directed to file one original and five duplicate hard copies, and one digital copy, of their respective briefs and to serve one copy on each other (*see* 22 NYCRR 1250.9[a][4]; [c][1]).

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 sentence imposed was excessive (*see generally* *People v Harrison*, 153 AD3d 1277, 1278; *People v Suite*, 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).

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

ENTER:

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

Aprilanne Agostino
Clerk of the Court