

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

M245591
E/htr

JOHN M. LEVENTHAL, J.P.
JEFFREY A. COHEN
JOSEPH J. MALTESE
BETSY BARROS, JJ.

2017-13258

People of State of New York, respondent,
v Robert Simmons, appellant.

DECISION & ORDER ON MOTION

Motion by the appellant pursuant to CPL 460.30 for an extension of time to take an appeal from an order of the County Court, Suffolk County, dated October 26, 2017, for leave to prosecute the appeal as a poor person, and for the assignment of counsel.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that of the branch of the motion which is pursuant to CPL 460.30 for an extension of time to take an appeal is denied as CPL 460.30 does not apply to this appeal (*see* Corrections Law 168-n[3]) and the papers filed in connection with the motion do not reflect that the notice of appeal was untimely (*see* CPLR 5513); and it is further,

ORDERED that of the branches of the motion which are for leave to prosecute the appeal as a poor person, and for the assignment of counsel are denied as unnecessary, as the appellant was granted leave to proceed as a poor person in the County Court and, pursuant to Correction Law 168-n (3), his status as a poor person and the representation by counsel assigned by the County Court, Suffolk County, continues on appeal; and it is further,

ORDERED that the appeal will be heard on the original papers (including a certified transcript of the proceedings, if any) and on the appellant's and the respondent's briefs; the parties are directed to file nine copies of their respective briefs and to serve one copy on each other; and it is further,

ORDERED that the stenographer of the trial court is directed promptly to make, certify, and file two transcripts of the proceedings of any hearing held in connection with the order dated October 26, 2017, except for those minutes previously transcribed and certified (*see* 22

February 1, 2018

PEOPLE OF STATE OF NEW YORK v SIMMONS

NYCRR 671.9); and it is further,

ORDERED that the clerk of the trial court shall furnish one certified transcript of each of the proceedings to the appellant's counsel, without charge (*see* CPLR 1102[b]); assigned counsel is directed to turn over those transcripts to the respondent when counsel serves the appellant's brief on the respondent; and it is further,

ORDERED that upon service of a copy of this decision and order on motion upon it, the Department of Probation is hereby authorized and directed to provide assigned counsel with a copy of the presentence report prepared in connection with or considered by the trial court in connection with the appellant's risk level determination, including the recommendation sheet and any prior reports on the appellant which are incorporated or referred to in the report, and to provide additional copies to this Court upon demand; and it is further,

ORDERED that the appellant's time to perfect the appeal is enlarged; assigned counsel shall prosecute the appeal expeditiously in accordance with this Court's rules (*see* 22 NYCRR 670.1, *et seq.*) and written directions; and it is further,

ORDERED that in the event the file has been sealed, it is hereby unsealed for the limited purpose of allowing assigned counsel or his representative access to the record for the purpose of preparing the appeal; such access shall include permission to copy the papers insofar as they pertain to the appellant; and it is further,

ORDERED that the filing fee is waived (*see* CPLR 1102[d]); and it is further,

ORDERED that assigned counsel is directed to serve a copy of this decision and order on motion upon the clerk of the court from which the appeal is taken.

LEVENTHAL, J.P., COHEN, MALTESE and BARROS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

February 1, 2018

PEOPLE OF STATE OF NEW YORK v SIMMONS