

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

M247171
E/rr

CHERYL E. CHAMBERS, J.P.
LEONARD B. AUSTIN
SANDRA L. SGROI
COLLEEN D. DUFFY, JJ.

2005-00576

The People, etc., respondent,
v Benjamin Ayala, appellant.

DECISION & ORDER ON MOTION

(Ind. No. 8275/03)

Application by the appellant for a writ of error coram nobis to vacate, on the ground of ineffective assistance of appellate counsel, a decision and order of this Court dated January 23, 2007 (*People v Ayala*, 36 AD3d 827), affirming a judgment of the Supreme Court, Kings County, rendered January 11, 2005.

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

ORDERED that on the Court's own motion, the appellant is granted leave to serve and file a brief on the issue of whether the counts charging him with burglary in the first degree were multiplicitous; and it is further,

ORDERED that pursuant to County Law § 722, the following named attorney is assigned as counsel to prosecute the application:

Mark Diamond
Box 287356
Yorkville Station, New York 10128

and it is further,

ORDERED that assigned counsel shall file the brief expeditiously in accordance with this Court's rules (*see* 22 NYCRR 670.1, *et seq.*), and written directions; and it is further,

March 16, 2018

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ORDERED that the application is held in abeyance in the interim.

CHAMBERS, J.P., AUSTIN, SGROI and DUFFY, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court

Appellant's address:
05-A-0302
Green Haven Corr. Fac.
P.O. Box 4000
Stormville, NY 12582