

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

M247376
AFA/

LEONARD B. AUSTIN, J.P.
SHERI S. ROMAN
ROBERT J. MILLER
FRANCESCA E. CONNOLLY, JJ.

2017-02714

DECISION & ORDER ON MOTION
Motion for Poor Person Relief
and to Assign Counsel

The People, etc., respondent,
v Suzanne Whitman, appellant.

(Ind. No. 43/16)

Renewed motion by the appellant pro se for leave to prosecute an appeal from a judgment of the County Court, Dutchess County, rendered January 24, 2017, as a poor person, and for the assignment of counsel. By order to show cause dated November 15, 2017, the appellant was directed to show cause before this Court why the appeal should not be dismissed on the ground that the notice of appeal from the judgment was untimely, and the appellant's motion was held in abeyance pending determination of this Court's motion to dismiss the appeal. Separate motion by the appellant pro se pursuant to CPL 460.30 for an extension of time to take an appeal from the judgment.

Now, upon the order to show cause and the papers filed in response thereto, upon the papers filed in support of the renewed motion for poor person relief and for the assignment of counsel and the papers filed in relation thereto, and upon the papers filed in support of the motion pursuant to CPL 460.30 for an extension of time to take an appeal from the judgment and the papers filed in relation thereto, it is

ORDERED that the motion to dismiss the appeal is denied; and it is further,

ORDERED that the appellant's motions are granted; and it is further,

ORDERED that the notice of appeal is deemed timely served and filed; and it is further,

ORDERED that the appeal will be heard on the original papers (including a certified

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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 pretrial hearings, of the plea of guilty or of the trial, and of the imposition of sentence in this action, except for those minutes previously transcribed and certified (*see* 22 NYCRR 671.9); and it is further,

ORDERED that in the event that the case was tried to a conclusion before a jury, the stenographer shall also make, certify, and file two transcripts of the minutes of proceedings during jury selection; and it is further,

ORDERED that the Clerk of the trial court shall furnish one certified transcript of each of the proceedings set forth above to the appellant's counsel, without charge (*see* CPL 460.70); 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 in the event the stenographer has already prepared a copy of any of the minutes for a codefendant, then the Clerk of the trial court is directed to reproduce a copy thereof for assigned counsel; 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 the appellant's sentencing, including the recommendation sheet and any prior reports on the appellant which are incorporated in or referred to in the report, and to provide additional copies to this Court upon demand; and it is further,

ORDERED that in the event an issue as to the legality, propriety, or excessiveness of the sentence is raised on appeal, or if assigned counsel cites or relies upon the probation report in a brief or motion in any other way, counsel shall provide a complete copy of such report and any attachments to the Court and the District Attorney's office prior to the filing of such brief or motion; and it is further,

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

Thomas N. N. Angell
Public Defender
22 Market Street
Poughkeepsie, NY 12601

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 or her 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 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.

AUSTIN, J.P., ROMAN, MILLER and CONNOLLY, 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:
17-G-0127
Albion Corr. Fac.
3595 State School Road
Albion, NY 14411-9399