

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

M247653
E/afa

ALAN D. SCHEINKMAN, P.J.
RUTH C. BALKIN
LEONARD B. AUSTIN
SYLVIA O. HINDS-RADIX, JJ.

2007-00462

The People, etc., respondent,
v Kenneth Toney, appellant.

ORDER TO SHOW CAUSE

(Ind. No. 1580D/06)

Motion by the appellant, in effect, for poor person relief and the assignment of counsel on an appeal from a judgment of the County Court, Suffolk County, rendered December 1, 2006.

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

ORDERED that on the Court's own motion, the appellant is directed to show cause before this Court why an order should or should not be made and entered dismissing the appeal on the ground that the appeal has been abandoned, by filing an affirmation or an affidavit on that issue in the office of the Clerk of this Court on or before May 18, 2018; and it is further,

ORDERED that pursuant to County Law § 722 the following named attorney is assigned as counsel to respond to the order to show cause:

Laurette Mulry
Legal Aid Society of Suffolk County
300 Center Drive
P.O. Box 1697
Riverhead, New York 11901

and it is further,

ORDERED that the appellant's motion is held in abeyance pending determination of this Court's motion to dismiss the appeal; and it is further,

March 19, 2018

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ORDERED that the stenographer of the trial court, or the trial court's designee if that stenographer is no longer available, 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 in this action, except for those minutes previously transcribed and certified (*see* 22 NYCRR 671.9), unless the making of any of such transcripts is no longer possible, in which case the stenographer of the trial court, or the trial court's designee, shall file with the clerk of the trial court an affidavit setting forth which proceeding(s) cannot be transcribed; 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, unless the making of any of such transcripts is no longer possible, in which case the stenographer of the trial court, or the trial court's designee, shall file with the clerk of the trial court an affidavit setting forth that the proceeding cannot be transcribed; and it is further,

ORDERED that, with respect to the proceedings set forth above, the clerk of the trial court shall furnish to assigned counsel (1) one certified transcript of the proceedings, without charge (*see* CPL 460.70), and/or (2) a copy of the affidavit stating that the making of a transcript is no longer possible; assigned counsel is directed to turn over any such transcripts to the respondent when counsel files papers in response to this order to show cause; 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 order to show cause 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 it is further,

ORDERED that in the event that assigned counsel cites or relies upon the probation report in papers filed in response to this order to show cause, counsel shall provide a complete copy of such report and any attachments to this Court and the respondent prior to the filing of such papers; 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 responding to this order to show cause; 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 order to show cause upon the clerk of the court from which the appeal is taken; and it is further,

ORDERED that the Clerk of this Court or her designee is directed to serve a copy of this order to show cause upon the appellant at the appellant's last known place of residence or, if the appellant is imprisoned, at the institution in which the appellant is confined, upon the attorney who last appeared for the appellant, upon the attorney named above, and upon the District Attorney, by ordinary mail pursuant to CPL 470.60(2).

SCHEINKMAN, P.J., BALKIN, AUSTIN and HINDS-RADIX, 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