

People v Xavier Kearney

Motion No: 2023-04547

Slip Opinion No: 2023 NY Slip Op 76751(U)

Decided on November 16, 2023

Appellate Division, First Department, Motion Decision

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Judiciary Law § 431.

This motion is uncorrected and is not subject to publication in the
Official Reports.

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Dianne T. Renwick,
David Friedman
Tanya R. Kennedy
Manuel J. Mendez
John R. Higgitt,

Presiding Justice,

Justices.

The People of the State of New York,
Respondent,

-against-

Motion No. 2023-04547
Ind. No. 71504/22
Case No. 2023-05189

Xavier Kearney,
Defendant-Appellant.

Defendant having moved to deem the moving papers herein a timely filed notice of appeal, or in the alternative, for an order granting defendant permission to file an untimely notice of appeal from a judgment of the Supreme Court, Bronx County, rendered on or about March 07, 2023, for leave to prosecute the appeal as a poor person and assignment of counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the moving papers a timely filed notice of appeal and the appeal shall be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files with this Court an original, five hard copies and, if represented by counsel, one digital copy of such brief, together with the original record, pursuant to Section 1250.9 of the Practice Rules of the Appellate Division,

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Twyla Carter, Esq., The Legal Aid Society, 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 180 days from the receipt of the complete record.

ENTERED: November 16, 2023

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court