

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

D70454
O/htr

_____AD3d_____

Submitted - September 29, 2022

ANGELA G. IANNACCI, J.P.
REINALDO E. RIVERA
JOSEPH A. ZAYAS
JANICE A. TAYLOR, JJ.

2020-07750

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Johnathan J. Wright, appellant.

(Ind. No. 1245/19)

Thomas J. Butler, Melville, NY, for appellant.

Raymond A. Tierney, District Attorney, Riverhead, NY (Thomas C. Costello of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Mark D. Cohen, J.), rendered September 16, 2020, convicting him of criminal possession of a controlled substance in the seventh degree and criminal use of drug paraphernalia in the second degree, upon his plea of guilty, and imposing sentence. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which he moves for leave to withdraw as counsel for the appellant.

ORDERED that the motion of Thomas J. Butler for leave to withdraw as counsel for the appellant is granted, and he is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that Mark Diamond, Box 388 Pound Ridge, Pound Ridge, New York 10576-9919, is assigned as new counsel to prosecute the appeal; and it is further,

ORDERED that the respondent is directed to furnish a copy of the certified transcript of the proceedings to the appellant's new assigned counsel; and it is further,

ORDERED that new counsel shall serve and file a brief on behalf of the appellant

October 26, 2022

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within 90 days of this decision and order on motion, and the respondent shall serve and file its brief within 30 days after the brief on behalf of the appellant is served and filed. By prior decision and order on motion of this Court dated January 11, 2021, the appellant was granted leave to prosecute the appeal as a poor person, with the appeal to be heard on the original papers (including a certified transcript of the proceedings) and on the briefs of the parties. The parties are directed to upload, through the digital portal on this Court's website, digital copies of their respective briefs, with proof of service of one hard copy on each other (*see* 22 NYCRR 670.9[a]).

The brief submitted by the appellant's assigned counsel pursuant to *Anders v California* (386 US 738) is deficient because it fails to contain an adequate statement of facts and fails to analyze potential appellate issues or highlight facts in the record that might arguably support the appeal (*see People v Ellis*, 156 AD3d 718, 719; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 256). The statement of facts does not review, in any detail, the County Court's advisements to the appellant regarding the rights he was waiving by entering a plea of guilty, the inquiries made of the appellant to ensure that the plea of guilty was knowingly, intelligently, and voluntarily entered, or the appellant's responses to any of those advisements and inquiries (*see People v Velez*, 176 AD3d 1239, 1240; *People v Ellis*, 156 AD3d at 719; *People v Deprosperis*, 126 AD3d 997, 998). Furthermore, rather than acting as an advocate and evaluating whether there were any nonfrivolous issues to raise on appeal, assigned counsel has acted as "a mere advisor to the court," opining on the merits of the appeal (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 256; *see Anders v California*, 386 US at 744-745; *Matter of Thomas v Mobley*, 195 AD3d 933). Since the brief does not demonstrate that assigned counsel fulfilled his obligations under *Anders v California*, we must assign new counsel to represent the appellant (*see People v Velez*, 176 AD3d at 1240; *People v Ellis*, 156 AD3d at 720; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258).

IANNACCI, J.P., RIVERA, ZAYAS and TAYLOR, JJ., concur.

ENTER:


Maria T. Fasulo
Clerk of the Court