

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

D52117
Q/afa

_____AD3d_____

Submitted - March 16, 2017

REINALDO E. RIVERA, J.P.
L. PRISCILLA HALL
HECTOR D. LASALLE
FRANCESCA E. CONNOLLY, JJ.

2015-05407

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Andrea Benson, appellant.

(Ind. No. 14-187)

John R. Lewis, Sleepy Hollow, NY, for appellant.

Thomas P. Zugibe, District Attorney, New City, NY (Itamar J. Yeager of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Rockland County (Kelly, J.), rendered May 12, 2015, convicting her of murder in the second degree, upon her 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 John R. Lewis for leave to withdraw as counsel is granted, and he is directed to turn over all papers in his possession to the new counsel assigned herein; and it is further,

ORDERED that Salvatore C. Adamo, Esq., 350 Fifth Avenue, 59th Floor, New York, New York, 10118, is assigned as counsel to perfect the appeal; and it is further,

ORDERED that new counsel shall serve and file a brief on behalf of the appellant 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 April 1, 2016, the appellant was granted leave to prosecute the

May 3, 2017

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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, who were directed to file nine copies of their respective briefs and to serve one copy on each other.

While we are satisfied with the sufficiency of the brief filed by assigned counsel, upon our independent review of the record, we conclude that there are nonfrivolous issues in this case, including, but not necessarily limited to, whether the purported waiver of the defendant's right to appeal was valid (*see People v Bradshaw*, 18 NY3d 257; *People v Harris*, 142 AD3d 557) and, if such waiver is found to be invalid, whether the sentence imposed was excessive (*see People v Spangenberg*, 147 AD3d 874; *People v Suitte*, 90 AD2d 80).

Accordingly, assignment of new counsel is warranted (*see People v Stokes*, 95 NY2d 633, 638; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252).

RIVERA, J.P., HALL, LASALLE and CONNOLLY, 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