

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

M76052  
F/

DAVID S. RITTER, J.P.  
FRED T. SANTUCCI  
WILLIAM E. McCARTHY  
THOMAS A. DICKERSON, JJ.

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2008-04470

The People, etc., respondent,  
v Vincent DeVivo, appellant.

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

(Ind. Nos. 206/93, 214/93, 216/93, 296/93)

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Motion by the appellant for leave to prosecute an appeal from a resentence of the Supreme Court, Richmond County, imposed April 11, 2008, pursuant to chapter 738 of the Laws 2005, as a poor person, and for the assignment of counsel.

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

ORDERED that the motion is granted; and it is further,

ORDERED that the appeal will be heard on the original papers (including a certified transcript of the proceedings, if any) and on the appellant's and the respondent's motion papers; and it is further,

ORDERED that the stenographer of the trial court is directed promptly to make, certify, and file two transcripts of the resentence in this action, except for those minutes previously transcribed and certified (*see* 22 NYCRR 671.9); 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,

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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 defendant's resentencing, including the recommendation sheet and any prior reports on the defendant which are incorporated or referred to in the report; and it is further,

ORDERED that in the event an issue as to the legality, propriety, or excessiveness of the resentence 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:

Lynn W. L. Fahey, Esq.  
Appellate Advocates  
2 Rector Street - 10<sup>th</sup> Floor  
New York, New York 10006

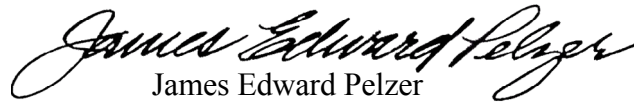
and it is further,

ORDERED that in the event the file has been sealed, it is hereby unsealed for the limited purpose of allowing assigned counsel or his 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.

RITTER, J.P., SANTUCCI, McCARTHY, and DICKERSON, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

*Appellant's address:*  
07 A 6741  
Eastern Corr. Fac.  
Box 338  
Napanoch, New York 12458

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