

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

M76700
E/sl

ROBERT A. LIFSON, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2006-05466

The People, etc., respondent,
v Urso Diaz, appellant.

DECISION & ORDER ON MOTION

(Ind. No. 2367/00)

Motion by the appellant's assigned counsel to be relieved from prosecuting an appeal from a judgment of the Supreme Court, Kings County, rendered May 23, 2005, on the ground that the appellant has been deported. By order to show cause dated August 15, 2008, the parties or their attorneys were 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 appellant had been deported and was no longer available to obey the mandate of the court (*see People v Hutchings*, 40 NY2d 836; *People v Smith*, 115 AD2d 625; *People v Davis*, 87 AD2d 578), and the assigned counsel's motion was held in abeyance in the interim.

Upon the order to show cause and the papers filed in response thereto, and upon the papers filed in support of the motion to be relieved and the papers filed in relation thereto, it is

ORDERED that the motion to dismiss the appeal is granted and the appeal is dismissed; and it is further,

ORDERED that the motion to be relieved is granted.

LIFSON, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

October 3, 2008

PEOPLE v DIAZ, URSO