

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

M79061  
S/sl

A. GAIL PRUDENTI, P.J.  
WILLIAM F. MASTRO  
REINALDO E. RIVERA  
ROBERT A. SPOLZINO  
PETER B. SKELOS, JJ.

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2008-05004

The People, etc., appellant,  
v Wolfgang Schellenbach, respondent.

DECISION & ORDER ON MOTION

(Ind. No. 07-00347)

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The People having appealed from an order of the County Court, Westchester County, dated April 29, 2008, and the appeal having been perfected on September 9, 2008, and the defendant having failed to timely file a brief in response thereto, now, in compliance with the requirements of *People v Garcia* (93 NY2d 42):

THE DEFENDANT IS HEREBY ADVISED

- A. that he has the right to the assistance of counsel on the People's appeal;
- B. that if he is financially unable to retain counsel he may make an application to this court for the assignment of counsel, and, upon proof of such financial inability, one will be appointed for him;
- C. that he has the right to forego the assistance of counsel and to respond to the People's appeal pro se; and
- D. that unless within 60 days from the date of this order the defendant either responds to the appeal pro se or by retained counsel, or moves for the appointment of counsel to represent him, he shall be deemed to have waived his right to counsel on the appeal and it shall be heard and determined on the People's brief and record alone; and,

November 26, 2008

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ON THE COURT'S OWN MOTION, it is:

ORDERED that the People are directed to serve a copy of this decision and order, together with a copy of their brief and appendix on the appeal, upon the defendant, by personal delivery of the same to him; and it is further,


ORDERED that the People shall file proof of such service with the Clerk of this court within 20 days of the date hereof; and it is further,

ORDERED that the defendant's time to respond to the appeal pro se or by retained counsel, or to move for the assignment of counsel, is enlarged until 60 days after the date of service upon him of a copy of this decision and order together with a copy of the brief and appendix on the appeal, and in the event that he fails to so respond to the appeal, or to move for the assignment of counsel within that time, or fails to move for an enlargement of time to respond to the appeal, the defendant shall be deemed to have waived his right to counsel, and the appeal shall be considered and determined only the People's brief and appendix, and original record; and it is further,

ORDERED that if personal service of a copy of this decision and order cannot be made with due diligence, the People may make ex parte application to this court for an order authorizing alternative methods of service. Such an application shall be supported by affidavit or affidavits detailing the steps taken to find and serve the defendant personally.

PRUDENTI, P.J., MASTRO, RIVERA, SPOLZINO and SKELOS, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court