

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

M79681  
E/sl

A. GAIL PRUDENTI, P.J.  
ROBERT A. SPOLZINO  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG, JJ.

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2008-08403

The People, etc., respondent,  
v Johannes Gonzalez, appellant.

(Ind. No. 02-00957)

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

Motion by the appellant pro se for leave to prosecute an appeal from a resentence of the County Court, Westchester County, imposed August 14, 2008, pursuant to the Drug Reform Act of 2004 (L2004 ch 738, § 23), as a poor person, and for the assignment of counsel. Separate motion by the respondent to dismiss the appeal.

Upon the papers filed in support of the motions and the papers filed in opposition thereto, it is

ORDERED that the motion to dismiss the appeal is held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof; and it is further,

ORDERED that the motion for leave to prosecute the appeal as a poor person and for the assignment of counsel 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 briefs; the parties are directed to file nine copies of their respective briefs and to serve one copy on each other; and it is further,

December 12, 2008

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ORDERED that the stenographer of the trial court is directed promptly to make, certify, and file two transcripts of the resentencing proceedings, 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,

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:

John R. Lewis, Esq.  
36 Hemlock Drive  
Sleepy Hollow, New York 10591

and it is further,


ORDERED that the appellant's time to perfect the appeal is enlarged; assigned counsel shall prosecute the appeal expeditiously in accordance with this court's rules (*see* 22 NYCRR 670.1, *et seq.*) and written directions; 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 order upon the Clerk of the court from which the appeal is taken.

PRUDENTI, P.J., SPOLZINO, SANTUCCI, ANGIOLILLO and ENG, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court