

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

M80075  
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A. GAIL PRUDENTI, P.J.  
MARK C. DILLON  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

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2007-02425

The People, etc., respondent,  
v Sergio David, appellant.

DECISION & ORDER ON MOTION

(Ind. No. 5335/05)

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Motion by James Layton Koenig, Esq., to be substituted as retained counsel, in place of assigned counsel, to prosecute an appeal from a judgment of the Supreme Court, Kings County, rendered January 31, 2007. The appellant's motion to dispense with printing and for the assignment of counsel was granted on May 22, 2007, and the following named attorney was 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

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 the following retained counsel is substituted for assigned counsel:

James Layton Koenig, Esq.  
Pollard & Koenig  
305 Broadway - Suite 1400  
New York, New York 10007

and it is further,

December 22, 2008

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ORDERED that on the court's own motion, so much of its decision and order dated May 22, 2007, as granted the appellant leave to prosecute the appeal as a poor person, is recalled and vacated; and it is further,

ORDERED that assigned counsel is directed to turn over all papers in the action, including any transcripts she may have obtained, to the Clerk of this court; and it is further,

ORDERED that the appellant's time to perfect the appeal is enlarged. Retained counsel shall prosecute the appeal expeditiously in accordance with this court's rules (22 NYCRR 670.1, *et seq.*) and written directions.

PRUDENTI, P.J., DILLON, ENG, and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court

*Retained Attorney:*  
James Layton Koenig, Esq.  
Pollard & Koenig  
305 Broadway - Suite 1400  
New York, New York 10007