

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

M88354
E/sl

MARK C. DILLON, J.P.
HOWARD MILLER
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2009-01799

The People, etc., respondent
v Oscar Mazarigos, appellant.

DECISION & ORDER ON MOTION

(Ind. No. 2057-08)

Motion by the appellant on an appeal from a judgment of the Supreme Court, Suffolk County, rendered February 25, 2009, to continue the stay of execution of said judgment, which was granted by a decision and order on motion of this court dated March 6, 2009, pending determination of the appeal to this court, for leave to prosecute the appeal as a poor person, and to enlarge the time to perfect the appeal.

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 stay of execution of the judgment granted by the decision and order on motion of this court dated March 6, 2009, is extended pending hearing and determination of the appeal, on condition that the appeal is perfected by October 20, 2009, and on the same bail conditions as imposed by the decision and order on motion of this court dated March 6, 2009; and it is further,

ORDERED that this stay shall terminate and be of no further effect, and the appellant shall thereafter surrender to serve the sentence imposed, unless the appeal is perfected on or before October 20, 2009; and it is further,

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ORDERED that upon the termination of this stay as provided above, this order shall constitute authorization to any peace officer to arrest and deliver the appellant to the sentencing court to begin the execution of sentence; 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,

ORDERED that the stenographer of the trial court is directed promptly to make, certify, and file two transcripts of the proceedings of any pretrial hearings, of the plea of guilty or of the trial, and of the imposition of sentence in this action, except for those minutes previously transcribed and certified (*see* 22 NYCRR 671.9); and it is further,

ORDERED that in the event that the case was tried to a conclusion before a jury, the stenographer shall also make, certify, and file two transcripts of the minutes of proceedings during jury selection; 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); appellant's 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 appellant's 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 appellant's counsel with a copy of the presentence report prepared in connection with the defendant's sentencing, 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 sentence is raised on appeal, or if appellant's 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 in the event the file has been sealed, it is hereby unsealed for the limited purpose of allowing appellant's 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 the appellant's time to perfect the appeal is enlarged; appellant's 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 counsel for the appellant shall serve a copy of this order, by mail, on the Clerk of the court from which the appeal is taken.

DILLON, J.P., MILLER, LEVENTHAL and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court