

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

M88819
E/sl

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
MARK C. DILLON
JOHN M. LEVENTHAL, JJ.

2005-10226

DECISION & ORDER ON MOTION

People of State of New York, respondent,
v London Lyons, appellant.

Motion by the appellant for leave to prosecute an appeal from an order of the County Court, Nassau County, dated August 19, 2005, as a poor person. By order to show cause dated May 15, 2009, the appellant was directed to show cause before this court why an order should or should not be made and entered dismissing the appeal for failure to prosecute, and the motion for poor person relief 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 for leave to prosecute the appeal as a poor person and the papers filed in relation thereto, it is

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

ORDERED that the motion for leave to prosecute the appeal as a poor person is denied as unnecessary, as the appellant was granted leave to proceed as a poor person in the Supreme Court and, pursuant to Correction Law 168-n (3), his status as a poor person continues on appeal; 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 hearing held in connection with the order dated April 27, 2009, except for those minutes previously transcribed and certified (*see* 22 NYCRR 671.9); and it is further,

July 10, 2009

Page 1.

PEOPLE OF STATE OF NEW YORK v LYONS

ORDERED that the clerk of the trial court shall furnish one certified transcript of each of the proceedings to the appellant's counsel, without charge (*see* CPLR 1102[b]); 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 pursuant to County Law § 722 the following named attorney is assigned as counsel to prosecute the appeal:

Kent V. Mosten, Esq.
Legal Aid Society of Nassau County
One Helen Keller Way
Hempstead, New York 11550

and it is further,

ORDERED that upon service of a copy of this decision and order 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 or considered by the trial court in connection with the appellant's risk level determination, including the recommendation sheet and any prior reports on the appellant which are incorporated or referred to in the report; and it is further,

ORDERED that the appellant's time to perfect the appeal is enlarged; assigned counsel shall perfect the appeal expeditiously in accordance with this court's rules (*see* 22 NYCRR 670.1 et seq.) and written directives; and it is further,

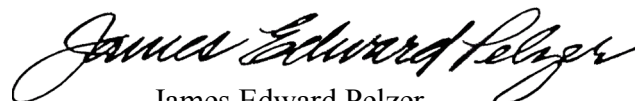
ORDERED that in the event the file has been sealed, it is hereby unsealed for the limited purpose of allowing assigned counsel or his representative access to the record for the purpose of preparing the appeal; such access shall include permission to copy the papers insofar as they pertain to the appellant; and it is further,

ORDERED that the filing fee is waived (*see* CPLR 1103[d]); 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.

SPOLZINO, J.P., SKELOS, DILLON and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court