

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

M90053  
F/

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL, JJ.

---

2009-06053

The People, etc., respondent,  
v Damion Henry, appellant.

(Ind. No. 4651/05)

---

DECISION & ORDER ON MOTION  
Motion for Leave to Serve  
Late Notice of Appeal, for Poor  
Person Relief & to Assign  
Counsel - Appeal from Judgment

Motion by the appellant pursuant to CPL 460.30 for an extension of time to take an appeal from a resentence of the Supreme Court, Kings County, imposed May 11, 2009, for leave to prosecute the appeal as a poor person, and for the assignment of counsel.

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 appellant's moving papers are deemed to constitute a timely notice of 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 the imposition of the resentence in this action, 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,

July 30, 2009

PEOPLE v HENRY, DAMION

Page 1.

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 the defendant's sentencing, including the recommendation sheet and any prior reports on the defendant which are incorporated in 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 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:

Lynn W. L. Fahey, Esq.  
Appellate Advocates  
2 Rector Street - 10th Floor  
New York, New York 10006

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 or her 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.

RIVERA, J.P., ENG, LEVENTHAL, and HALL, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

*Appellant's Address:*  
06 A 3244  
Downstate Corr. Fac.  
Box F  
Fishkill, New York 12524