

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

M90508  
E/sl

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2009-02611

The People, etc., respondent,  
v James Simmons, appellant.

DECISION & ORDER ON MOTION

(Ind. No. 2291/05)

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Motion by the appellant pro se for leave to prosecute an appeal from a judgment of the Supreme Court, Queens County, rendered July 11, 2008, as a poor person, and for the assignment of counsel. By order to show cause dated June 29, 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 on the ground that the notice of appeal was untimely and leave to file a late notice of appeal had not been granted (*see* CPL 460.10[1][a], 460.30), and the appellant's motion was held in abeyance in the interim.

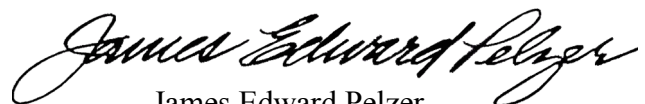
Upon the order to show cause and no papers having been filed in response thereto, and upon the papers filed in support of the appellant's motion and no papers having been filed in opposition or in relation thereto, it is

ORDERED that the motion to dismiss the appeal is granted and the appeal is dismissed (*see* CPL 460.10[1][a], 460.30); and it is further,

ORDERED that the appellant's motion is denied as academic.

SKELOS, J.P., DICKERSON, BELEN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

August 7, 2009

PEOPLE v SIMMONS, JAMES