

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

M90864
S/sl

MARK C. DILLON, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
LEONARD B. AUSTIN, JJ.

1995-11493

The People, etc., respondent,
v Ralik Bailey, appellant.

DECISION & ORDER ON MOTION

(Ind. No. 1319/95)

On the court's own motion, it is

ORDERED that its decision and order on motion dated December 28, 2004, in the above-entitled case is recalled and vacated, and the following decision and order on motion is substituted therefor:

Motion by the appellant for leave to reargue a motion to recall and vacate a decision and order on motion of this court dated May 14, 2002, which dismissed an appeal from a judgment of the Supreme Court, Kings County, rendered December 15, 1995, pursuant to 22 NYCRR 670.8(f) for failure to timely perfect the same, to reinstate the appeal, and to enlarge the time to perfect the appeal, which was determined by decision and order on motion of this court dated September 15, 2004. Separate application by the appellant 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 opposition thereto*, it is,

ORDERED that the motion is *granted, upon reargument the decision and order of this court dated September 15, 2004, is recalled and vacated, the motion to recall and vacate the decision and order on motion dated May 14, 2002, which dismissed the above-entitled appeal, is granted, the decision and order on motion dated May 14, 2002, is recalled and vacated and the appeal is reinstated; and it is further,*

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ORDERED that the application is granted; 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); 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,

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 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:

Legal Aid Society
199 Water Street, 5th floor
New York, New York 10038

and it is further,

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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 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.

DILLON, J.P., COVELLO, ANGIOLILLO and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

Appellant's address:
02 A 5656
Great Meadow Corr. Fac.
Box 51
Comstock, New York 12821