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

M93863
E/sl

REINALDO E. RIVERA, J.P.
STEVEN W. FISHER
JOSEPH COVELLO
LEONARD B. AUSTIN, JJ.

2009-08718

DECISION & ORDER ON MOTION
Motion for Poor Person Relief
and to Assign Counsel

People of State of New York, respondent,
v Richard Flowers, appellant.

Motion by the appellant pro se for leave to prosecute an appeal from an order of the Supreme Court, Kings County, dated September 1, 2009, 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 branch of the motion which is 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 and the counsel assigned to represent him before the Supreme Court, Kings County, 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 any hearing held in connection with the order dated September 1, 2009, 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 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 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 the filing fee is waived (see CPLR 1102[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.

RIVERA, J.P., FISHER, COVELLO and AUSTIN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court