

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT**

People v. Facundo

2026 NY Slip Op 01529 · No. 2025-04290 · Decided March 18, 2026

SUMMARY

The Appellate Division, Second Department granted assigned appellate counsel's motion to withdraw under *Anders v. California* after finding that the submitted brief was deficient because it did not adequately analyze potential legal issues. The court assigned new counsel to represent Juan B. Facundo in his appeal from a misdemeanor driving-while-intoxicated conviction and directed the parties to submit briefs on a specified schedule.

OPINION

PER CURIAM.

People v Facundo (2026 NY Slip Op 01529) People v Facundo 2026 NY Slip Op 01529 Decided on March 18, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on March 18, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

PAUL WOOTEN LILLIAN WAN PHILLIP HOM, JJ. 2025-04290 (Ind. No. 71419/24) [*1]The People of the State of New York, respondent, v Juan B. Facundo, appellant. Jason M. Bernheimer, Chappaqua, NY, for appellant. Susan Cacace, District Attorney, White Plains, NY (Raffaelina Gianfrancesco of counsel), for respondent (no brief filed). DECISION & ORDER Appeal by the defendant from a judgment of the County Court, Westchester County (Larry J. Schwartz, J., at plea; Melissa A. Loehr, J., at sentence), rendered February 26, 2025, convicting him of driving while intoxicated as a misdemeanor, upon his plea of guilty, and imposing sentence.

Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which he moves for leave to withdraw as counsel for the appellant. ORDERED that the motion of Jason M. Bernheimer for leave to withdraw as counsel for the appellant is granted, and he is directed to turn over all papers in his possession to the appellant's new counsel assigned herein; and it is further, ORDERED that Jerry F. Kebrdle, 44 Executive Blvd., Ste.

207, Elmsford, NY 10523, is assigned as counsel to prosecute the appeal; and it is further, ORDERED that the respondent is directed to furnish a copy of the certified transcript of the

proceedings to the appellant's new assigned counsel; and it is further, ORDERED that new counsel shall serve and file a brief on behalf of the appellant within 90 days of this decision and order on motion, and the respondent shall serve and file its brief within 30 days after the brief on behalf of the appellant is served and filed.

By prior decision and order on motion dated May 5, 2025, pursuant to CPL 380.55(2), this Court directed that the appeal be heard on the original papers, including a certified transcript of the proceedings, and on the briefs of the parties.

The parties are directed to upload, through the digital portal on this Court's website, digital copies of their respective briefs, with proof of service of one hard copy on each other (see 22 NYCRR 670.9[a]). In reviewing an attorney's motion to be relieved pursuant to *Anders v California* (386 US 738), this Court must first "satisfy itself that the attorney has provided the client with a diligent and thorough search of the record for any arguable claim that might support the client's appeal" (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d 252, 255, quoting *Penson v Ohio*, 488 US 75, 83). "[C]ounsel must, at a minimum, draw the Court's attention to the relevant evidence, with specific references to the record; identify and assess the efficacy of any significant objections, applications, [*2]or motions; and identify possible issues for appeal, with reference to the facts of the case and relevant legal authority" (*id.* at 258; see *People v Collins*, 239 AD3d 990, 991).

"Counsel cannot merely recite the underlying facts, and state a bare conclusion that, after reviewing the record and discussing the case with the client, it is the writer's opinion that there are no nonfrivolous issues to be raised on appeal" (*Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 258). If assigned counsel's *Anders* brief is deficient in this respect, "new counsel must be assigned to perform a new appellate review" (*People v Collins*, 239 AD3d at 991 [internal quotation marks omitted]).

Here, the brief submitted by assigned counsel pursuant to *Anders v California* is deficient because it fails to analyze potential legal issues with reference to the facts of the case and relevant legal authority (see *People v Norberto*, 234 AD3d 795, 796; *People v Telesco*, 235 AD3d 910, 912).

The analysis does little more than assert the conclusory opinion of assigned counsel that there are no nonfrivolous issues to raise on appeal (see *People v Norberto*, 234 AD3d at 796; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 256). Since the brief does not demonstrate that assigned counsel fulfilled his obligations under *Anders v California*, we must assign new counsel to represent the defendant (see *People v Santos*, 180 AD3d 941, 942; *Matter of Giovanni S. [Jasmin A.]*, 89 AD3d at 256).

CHAMBERS, J.P., WOOTEN, WAN and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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