

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FOURTH DEPARTMENT

People v. Smith

2021 NY Slip Op 03805 (App. Div. 2021) · No. KA 17-01118 · Decided June 11, 2021

SUMMARY

The New York Appellate Division, Fourth Department granted assigned appellate counsel's motion to be relieved and directed that new counsel be assigned. The court found a nonfrivolous issue concerning the validity of the defendant's waiver of the right to appeal following his guilty plea and sentence for attempted robbery in the second degree.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Per curiam; CARNI, J.P.; LINDLEY, J.; CURRAN, J.; BANNISTER, J.; DEJOSEPH, J.
JURISDICTION	New York
DECIDED	June 11, 2021
DOCKET	KA 17-01118
DISPOSITION	other
PROCEDURAL POSTURE	Assigned appellate counsel moved to be relieved pursuant to People v. Crawford. The Appellate Division held the case and reserved decision, granted the motion, and directed that new appellate counsel be assigned.
PRECEDENTIAL VALUE	Published New York Appellate Division memorandum decision
PARTIES	Anthony T. Smith v. The People of the State of New York

TOPICS

appellate procedure right to counsel criminal procedure

PRACTICE AREAS

criminal appellate procedure right to counsel guilty pleas

QUESTIONS PRESENTED

1. Whether assigned appellate counsel should be relieved under *People v. Crawford* where the record presents a nonfrivolous issue concerning the validity of the defendant's waiver of the right to appeal.
2. Whether the validity of defendant's waiver of the right to appeal presents a nonfrivolous issue requiring briefing by newly assigned appellate counsel.

HOLDINGS

1. Assigned appellate counsel was relieved of the assignment, and new counsel was directed to be assigned, because a nonfrivolous issue existed concerning the validity of defendant's waiver of the right to appeal.

KEY QUOTATIONS

“However, a nonfrivolous issue exists as to whether defendant's waiver of the right to appeal was valid.”
([*1])

FACTUAL BACKGROUND

Anthony T. Smith pleaded guilty to attempted robbery in the second degree under Penal Law §§ 110.00 and 160.10(1). Monroe County Court imposed a determinate three-year prison term and five years of postrelease supervision. In the ensuing appeal, assigned appellate counsel sought permission to withdraw, but the record presented a nonfrivolous question regarding whether Smith validly waived his right to appeal.

PROCEDURAL HISTORY

Defendant was convicted upon a guilty plea in Monroe County Court of attempted robbery in the second degree and sentenced to a determinate term of three years' imprisonment followed by five years of postrelease supervision. On appeal, assigned appellate counsel moved to be relieved. The Appellate Division denied continued representation by current assigned counsel because a nonfrivolous issue existed concerning the validity of defendant's waiver of the right to appeal, and ordered new counsel assigned.

DISPOSITION

other

REMAND INSTRUCTIONS

New appellate counsel is to be assigned to brief the validity of defendant's waiver of the right to appeal and any other issues that counsel's review of the record may disclose.

CASES CITED

- *People v. Crawford*, 71 A.D.2d 38 (4th Dep't 1979)

OPINION

PER CURIAM.

People v Smith (2021 NY Slip Op 03805) People v Smith 2021 NY Slip Op 03805 Decided on June 11, 2021 Appellate Division, Fourth 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 June 11, 2021 PRESENT: CARNI, J.P., LINDLEY, CURRAN, BANNISTER, AND DEJOSEPH, JJ. (Filed June 11, 2021.)

KA 17-01118. [*1]THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, vANTHONY T. SMITH, DEFENDANT-APPELLANT. MEMORANDUM AND ORDER The case is held, the decision is reserved, the motion to relieve counsel of assignment is granted and new counsel is to be assigned. Memorandum: Defendant was convicted upon a guilty plea of attempted robbery in the second degree (Penal Law §§ 110.00, 160.10 [1]) and was sentenced to a determinate term of imprisonment of three years and five years of postrelease supervision.

Defendant's assigned appellate counsel has moved to be relieved of the assignment pursuant to People v Crawford (71 AD2d 38 [4th Dept 1979]). However, a nonfrivolous issue exists as to whether defendant's waiver of the right to appeal was valid.

Therefore, we relieve counsel of his assignment and assign new counsel to brief this issue, as well as any other issues that counsel's review of the record may disclose. (Appeal from Judgment of Monroe County Court, Douglas A. Randall, J. - Attempted Robbery, 2nd Degree).