

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

People v. Jones

2021 NY Slip Op 06628 (N.Y. Ct. App. 2021) · No. 2018-14608 · Decided November 24, 2021

SUMMARY

The Appellate Division, Second Department affirmed the defendant's judgment of conviction for conspiracy in the fourth degree and attempted criminal possession of a weapon in the second degree, entered upon his guilty plea. The court held that assigned counsel's Anders brief was sufficient, found no nonfrivolous appellate issues upon independent review, and granted counsel's motion to withdraw.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Sylvia O. Hinds-Radix, J.; Valerie Brathwaite Nelson, J.; Lara J. Genovesi, J.
JURISDICTION	New York
DECIDED	November 24, 2021
DOCKET	2018-14608
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Kings County, convicting him upon his guilty plea of conspiracy in the fourth degree and attempted criminal possession of a weapon in the second degree and imposing sentence. Assigned appellate counsel filed an Anders brief and moved for leave to withdraw.
STANDARD OF REVIEW	Independent review of the record for nonfrivolous issues under Anders v. California.
PRECEDENTIAL VALUE	published
PARTIES	Linwood Jones, also known as Miek, also known as Linwood Bonner 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

QUESTIONS PRESENTED

1. Whether assigned appellate counsel's Anders brief adequately addressed the essential issues despite failing to analyze the validity and enforceability of defendant's waiver of the right to appeal.
2. Whether the record contained any nonfrivolous issue that could be raised on appeal.
3. Whether assigned counsel should be permitted to withdraw under Anders.

HOLDINGS

1. Under the circumstances of this case, assigned counsel's Anders brief was sufficient because it addressed the essential issues, and the omission of an analysis of the validity and enforceability of the defendant's appeal waiver made no practical difference to the Anders outcome.
2. The record contained no nonfrivolous issue that could be raised on appeal.
3. Assigned counsel's application for leave to withdraw was granted.

KEY QUOTATIONS

“Under the circumstances of this case, the brief filed by the defendant's assigned counsel pursuant to Anders v California (386 US 738) was sufficient because it addressed the essential issues, and although the brief failed to analyze the validity of the defendant's waiver of the right to appeal and the enforceability of the waiver, the enforceability or unenforceability of the defendant's waiver of the right to appeal makes no practical difference to the Anders outcome”

“Moreover, upon an independent review of the record, we conclude that there are no nonfrivolous issues that could be raised on appeal”

FACTUAL BACKGROUND

Defendant pleaded guilty to conspiracy in the fourth degree and attempted criminal possession of a weapon in the second degree. The Supreme Court, Kings County, rendered judgment on September 21, 2018, and imposed sentence. On appeal, assigned counsel submitted an Anders brief and sought leave to withdraw.

PROCEDURAL HISTORY

The Supreme Court, Kings County, rendered judgment on September 21, 2018, after defendant pleaded guilty to conspiracy in the fourth degree and attempted criminal possession of a weapon in the second degree. Defendant appealed. Assigned counsel filed an Anders brief, and the Appellate Division independently reviewed the record, found no nonfrivolous appellate issue, granted counsel's withdrawal application, and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Anders v. California, 386 U.S. 738
- People v. Morris, 187 A.D.3d 938, 939
- People v. Warney, 186 A.D.3d 1273
- People v. Murray, 169 A.D.3d 227, 233
- Matter of Giovanni S. [Jasmin A.], 89 A.D.3d 252
- People v. Paige, 54 A.D.2d 631

OPINION

People v. Jones 2021 NY Slip Op 06628

PER CURIAM.

People v Jones (2021 NY Slip Op 06628) People v Jones 2021 NY Slip Op 06628 Decided on November 24, 2021 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 November 24, 2021

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P.

SYLVIA O. HINDS-RADIX

VALERIE BRATHWAITE NELSON

LARA J. GENOVESI, JJ. 2018-14608

(Ind. No. 1474/15) [*1]The People of the State of New York, respondent, vLinwood Jones, also known as Miek, also known as Linwood Bonner, appellant. Janet E. Sabel, New York, NY (Kristina Schwarz of counsel), for appellant. Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Jodi L. Mandel of counsel; Robert Ho on the brief), for respondent. DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Kings County (Martin P. Murphy, J.), rendered September 21, 2018, convicting him of conspiracy in the fourth degree and attempted criminal possession of a weapon in the second degree, 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 she moves for leave to withdraw as counsel for the appellant. ORDERED that the judgment is affirmed. Under the circumstances of this case, the brief filed by the defendant's assigned counsel pursuant to Anders v California (386 US 738) was sufficient because it addressed the essential issues in this case, and although the brief failed to analyze the validity of the defendant's waiver of the right to appeal and the enforceability of the waiver, the enforceability or unenforceability of the defendant's waiver of the right to appeal makes no practical difference to the Anders outcome (see People v Morris, 187 AD3d 938, 939; People v Warney, 186 AD3d 1273; People v Murray, 169 AD3d 227, 233). Moreover, upon an independent review of the record, we conclude that there are no nonfrivolous issues that could be raised on appeal (see People v Murray, 169 AD3d 227). Counsel's application for leave to

withdraw as counsel is, therefore, granted (see id.; Matter of Giovanni S. [Jasmin A.], 89 AD3d 252; People v Paige, 54 AD2d 631). MASTRO, J.P., HINDS-RADIX, BRATHWAITE NELSON and GENOVESI, JJ., concur. ENTER: Maria T. Fasulo Clerk of the Court

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