

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: December 29, 2011

103566

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

CHRISTIAN J. SMITH,

Appellant.

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Calendar Date: November 2, 2011

Before: Mercure, Acting P.J., Spain, Kavanagh, McCarthy and  
Garry, JJ.

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George P. Ferro, Albany, for appellant.

Weeden A. Wetmore, District Attorney, Elmira, for  
respondent.

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Appeal from a judgment of the County Court of Chemung  
County (Hayden, J.), rendered July 2, 2010, convicting defendant  
upon his plea of guilty of the crime of criminal possession of a  
weapon in the second degree.

In satisfaction of a three-count indictment, defendant  
pleaded guilty to criminal possession of a weapon in the second  
degree. In accordance with the terms of the plea agreement, he  
was sentenced to seven years in prison to be followed by five  
years of postrelease supervision. Defendant appeals.

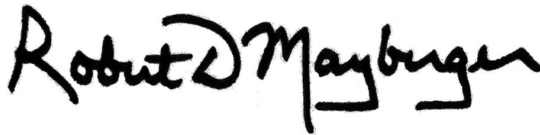
Appellate counsel seeks to be relieved of his assignment of  
representing defendant on the ground that there are no  
nonfrivolous issues to be raised on appeal. Based upon our  
review of the record, we disagree. We find one issue of arguable

merit pertaining to the severity of the sentence that warrants further review. Accordingly, without passing judgment on the ultimate merit of this issue, we grant counsel's application and assign new counsel to address this issue and any others that the record may disclose (see People v Stokes, 95 NY2d 633 [2001]; People v Garren, 74 AD3d 1578 [2010]; People v Cruwys, 113 AD2d 979 [1985], lv denied 67 NY2d 650 [1986]).

Mercure, Acting P.J., Spain, Kavanagh, McCarthy and Garry, JJ., concur.

ORDERED that the decision is withheld, application to be relieved of assignment granted and new counsel to be assigned.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court