

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

Decided and Entered: February 9, 2012

103092

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

HAROLD J. HUMPHREY JR.,

Appellant.

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Calendar Date: December 12, 2011

Before: Mercure, Acting P.J., Peters, Spain, Kavanagh and  
Stein, JJ.

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Eugene P. Grimmick, Troy, for appellant, and appellant  
pro se.

Richard J. McNally Jr., District Attorney, Troy (Gordon W.  
Eddy of counsel), for respondent.

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Appeal from an order of the County Court of Rensselaer  
County (Czajka, J.), entered October 6, 2009, which, among other  
things, denied defendant's motion pursuant to CPL 440.30 (1-a)  
for the performance of forensic DNA testing on specified  
evidence.

Defendant was convicted of three counts of rape in the  
second degree and his conviction was upheld on appeal (30 AD3d  
766 [2006], lv denied 7 NY3d 813 [2006]). He subsequently moved  
pursuant to CPL 440.30 (1-a) seeking to have DNA evidence  
collected from the victim produced for comparison with his own  
DNA. As part of the motion, he also sought to have his  
conviction vacated based upon the alleged denial of his  
constitutional right to confront witnesses. County Court denied

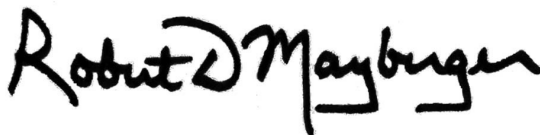
the motion and defendant appeals.

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, counsel's brief and defendant's pro se submission, we agree (see People v Pugh, 288 AD2d 634 [2001]). Therefore, the judgment is affirmed and counsel's request for leave to withdraw is granted (see People v Stokes, 95 NY2d 633 [2001]; People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]).

Mercure, Acting P.J., Peters, Spain, Kavanagh and Stein, JJ., concur.

ORDERED that the order is affirmed, and application to be relieved of assignment granted.

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