

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

Decided and Entered: February 2, 2012

103731

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

BRIEN M. DeMARTINO,

Appellant.

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Calendar Date: December 12, 2011

Before: Rose, J.P., Spain, Stein, McCarthy and Garry, JJ.

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Thomas F. Garner, Middleburgh, for appellant.

James Sacket, District Attorney, Schoharie, for respondent.

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Appeal from a judgment of the County Court of Schoharie County (Bartlett III, J.), rendered September 8, 2010, convicting defendant upon his plea of guilty of the crimes of forgery in the second degree and criminal possession of a forged instrument in the second degree.

Defendant waived indictment and agreed to be prosecuted by a superior court information charging him with six theft-related crimes. He pleaded guilty to forgery in the second degree and criminal possession of a forged instrument in the second degree in satisfaction thereof. He also waived his right to appeal. Thereafter, in accordance with the terms of the plea agreement, defendant was sentenced as a second felony offender to concurrent terms of 2½ to 5 years in prison. He now appeals.

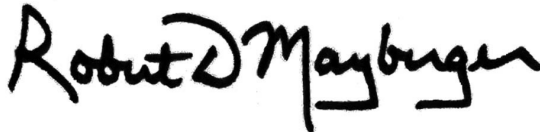
Appellate counsel seeks to be relieved of his assignment of representing defendant on the ground that there are no

nonfrivolous issues to be raised on appeal. Based upon our review of the record and counsel's brief, we agree. Therefore, the judgment is affirmed and counsel's request for leave to withdraw is granted (see People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]; see generally People v Stokes, 95 NY2d 633 [2001]).

Rose, J.P., Spain, Stein, McCarthy and Garry, JJ., concur.

ORDERED that the judgment 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