

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

Decided and Entered: September 13, 2012

103965

THE PEOPLE OF THE STATE OF
NEW YORK,
Respondent,
v

MEMORANDUM AND ORDER

RAYMOND COLE JR., Also Known
as JUNIOR,
Appellant.

Calendar Date: July 30, 2012

Before: Peters, P.J., Mercure, Malone Jr., Kavanagh and
Stein, JJ.

Frank A. Sarat, Homer, for appellant, and appellant pro se.

Mark D. Suben, District Attorney, Cortland (Kevin A. Jones
of counsel), for respondent.

Appeal from a judgment of the County Court of Cortland
County (Ames, J.), rendered March 18, 2008, convicting defendant
upon his plea of guilty of the crime of attempted criminal sale
of a controlled substance in the third degree.

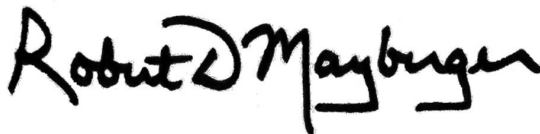
In satisfaction of, among other things, a two-count
indictment, defendant pleaded guilty to one count of attempted
criminal sale of a controlled substance in the third degree.
Pursuant to the plea agreement, defendant waived his right to
appeal at sentencing. County Court then sentenced defendant to
time served, five years of probation and a six-month suspension
of his driver's license. Defendant now appeals.

Appellate counsel seeks to be relieved of his assignment on the ground that no nonfrivolous issue can be raised. Upon our review of the record, counsel's brief and defendant's pro se submission, we disagree. Given, among other things, defendant's challenges to the summary denial of his motion to withdraw his guilty plea and claims of ineffective assistance of counsel, we find that the record reveals the existence of issues that cannot be characterized as wholly frivolous. Without expressing any opinion as to the ultimate merit of such issues, defense counsel's application to be relieved of his assignment is granted and new counsel will be assigned to address any issues that the record may disclose (see People v Stokes, 95 NY2d 633, 636 [2001]; People v Cruwys, 113 AD2d 979 [1985], lv denied 67 NY2d 650 [1986]).

Peters, P.J., Mercure, Malone Jr., Kavanagh and Stein, 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