

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

Decided and Entered: August 2, 2012

104188

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

EDWARD O. LEWIS II,

Appellant.

Calendar Date: June 6, 2012

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

Eugene P. Grimmick, Troy, for appellant.

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

Appeal from a judgment of the County Court of Rensselaer County (Ceresia, J.), rendered March 18, 2010, convicting defendant upon his plea of guilty of the crime of attempted burglary in the third degree.

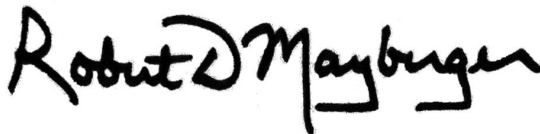
Defendant waived indictment and agreed to be prosecuted by a superior court information charging him with one count of attempted burglary in the third degree. He thereafter pleaded guilty to that charge and also waived his right to appeal orally and in writing. Subsequently, in accordance with the terms of the plea agreement, defendant was sentenced to, among other things, time served and five years of probation. Upon his appeal, defense counsel seeks to be relieved of his assignment on the ground that no nonfrivolous issue can be raised. Upon our review of the record, we disagree. Given, among other things, defendant's protestation of innocence while addressing County

Court at sentencing and certain mental health issues raised in the presentence report, 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 any potential arguments, 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, 980 [1985], lv denied 67 NY2d 650 [1986]).

Rose, J.P., Lahtinen, Stein, 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