

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

Decided and Entered: June 8, 2017

106237

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

SHAWN DELAYO,

Appellant.

Calendar Date: May 9, 2017

Before: Peters, P.J., McCarthy, Garry, Egan Jr. and Lynch, JJ.

M. Joe Landry, Schenectady, for appellant, and appellant
pro se.

Robert M. Carney, District Attorney, Schenectady, for
respondent.

Appeal from a judgment of the County Court of Schenectady
County (Drago, J.), rendered June 24, 2013, which resentenced
defendant following his conviction of the crime of criminal sale
of a controlled substance in the third degree.

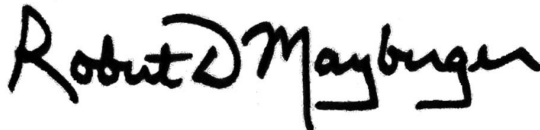
As is relevant here, defendant pleaded guilty to count 1 of
the indictment charging him with criminal sale of a controlled
substance in the third degree and was sentenced to a prison term
of 8 to 24 years followed by a period of postrelease supervision.
Thereafter, he successfully moved pursuant to CPL 440.46 for
resentencing. Ultimately, defendant was resentenced to the
maximum statutory prison term of nine years, followed by two
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, defense counsel's brief and defendant's pro se submission, there is at least one issue of arguable merit, whether the resentence was harsh and excessive. Therefore, without expressing any opinion as to the ultimate merit of that issue, we will grant defense counsel's application for leave to withdraw and assign new counsel to address this issue and any other issue that the record may disclose (see People v Stokes, 95 NY2d 633 [2001]; People v Cruwys, 113 AD2d 979 [1985], lv denied 67 NY2d 650 [1986]).

Peters, P.J., McCarthy, Garry, Egan Jr. and Lynch, 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