

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

Decided and Entered: June 8, 2017

107459

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ERIC MALLARD,

Appellant.

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Calendar Date: May 9, 2017

Before: Peters, P.J., McCarthy, Rose, Clark and Mulvey, JJ.

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John T. Casey Jr., Troy, for appellant.

Joel E. Abelove, District Attorney, Troy (Vincent J. O'Neill of counsel), for respondent.

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Appeal from a judgment of the Supreme Court (McGrath, J.), rendered November 12, 2013 in Rensselaer County, convicting defendant upon his plea of guilty of the crime of manslaughter in the first degree.

Pursuant to a plea agreement that required a waiver of appeal, defendant waived indictment and pleaded guilty to manslaughter in the first degree as charged in a superior court information, stemming from the stabbing death of Takim Smith on February 4, 2013. Supreme Court sentenced defendant to the agreed-upon prison term of 20 years with five years of postrelease supervision and ordered him to pay restitution. He now appeals.

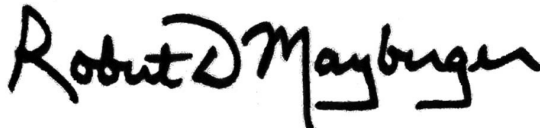
On appeal, defense counsel seeks to be relieved of his assignment as counsel for defendant on the ground that there are

no nonfrivolous issues that can be raised on appeal. Upon our review of the record and counsel's brief, however, we perceive at least two issues of arguable merit pertaining to the validity of the waiver of appeal and the severity of the sentence (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Gassner, 109 AD3d 1024, 1025 [2013]; People v Wasley, 100 AD3d 1106, 1107 [2012]; People v Baker, 82 AD3d 1352, 1352 [2011]). Accordingly, without expressing an opinion on the ultimate merit of these or any other issues, we grant counsel's application for leave to withdraw and assign new counsel to address these issues and any others that the record may disclose (see People v Stokes, 95 NY2d 633, 722 [2001]; People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]).

Peters, P.J., McCarthy, Rose, Clark and Mulvey, 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