

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

Decided and Entered: November 8, 2018

108855

---

THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

EFRAIN J. ACEVEDO III,  
Appellant.

---

Calendar Date: September 18, 2018

Before: Garry, P.J., McCarthy, Egan Jr., Clark and Rumsey, JJ.

---

Stephen W. Herrick, Public Defender, Albany (Jessica M. Gorman of counsel), for appellant.

P. David Soares, District Attorney, Albany (Christopher D. Horn of counsel), for respondent.

---

Appeal from a judgment of the County Court of Albany County (Lynch, J.), rendered August 17, 2016, which, among other things, on a joint motion dismissed count 3 of the indictment charging defendant with criminal possession of marihuana in the fourth degree.

Defendant was charged in an indictment with criminal possession of a controlled substance in the third degree (counts 1 and 2), criminal possession of marihuana in the fourth degree (count 3) and criminally using drug paraphernalia in the second degree (count 4). Following a jury trial, he was acquitted of counts 1 and 4, but convicted of count 3. Although the jury was unable to reach a verdict on count 2, defendant was later

convicted of this crime following a second jury trial. On appeal, this Court modified the judgment by reversing that part as convicted defendant of count 3 and affirming that part as convicted defendant of count 2, and remitted the matter for further proceedings (141 AD3d 843, 852 [2016]). Upon remittal, County Court dismissed count 3 upon the joint motion of the parties and reaffirmed the sentence imposed on count 2. Defendant appeals.

Appellate counsel seeks to be relieved of her assignment of representing defendant on the ground that there are no nonfrivolous issues to be raised on appeal. Upon reviewing the record and counsel's brief, we agree. Defendant was acquitted of counts 1 and 4, his conviction of count 2 was upheld on appeal and count 3 was dismissed. In view of this, there are no issues of arguable merit that may be raised on appeal. Accordingly, 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 Beaty, 22 NY3d 490 [2014]; People v Stokes, 95 NY2d 633 [2001]).

Garry, P.J., McCarthy, Egan Jr., Clark and Rumsey, JJ.,  
concur.

ORDERED that the judgment is affirmed, and application to be relieved of assignment granted.

ENTER:



Robert D. Mayberger  
Clerk of the Court