

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

Decided and Entered: June 20, 2019

108949

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

LANCE MOREHOUSE,

Appellant.

Calendar Date: May 24, 2019

Before: Lynch, J.P., Clark, Devine, Aarons and Rumsey, JJ.

Marshall Nadan, Kingston, for appellant, and appellant
pro se.

J. Anthony Jordan, District Attorney, Fort Edward (Joseph
A. Frandino of counsel), for respondent.

Appeal from a judgment of the Supreme Court (McKeighan,
J.), rendered February 26, 2019 in Washington County, convicting
defendant upon his plea of guilty of the crimes of criminal
possession of a controlled substance in the third degree and
criminal possession of a weapon in the third degree.

In satisfaction of two indictments charging him with
various crimes, defendant pleaded guilty to criminal possession
of a controlled substance in the third degree and criminal
possession of a weapon in the third degree, and waived his right
to appeal, both orally and in writing. Under the terms of the
plea agreement, he was to be sentenced as a second felony
offender to concurrent prison terms of 6½ years followed by two

years of postrelease supervision on his controlled substance conviction and 1½ to 3 years on his weapon conviction. At sentencing, however, County Court realized that the agreed-upon sentence of 1½ to 3 years in prison for the weapon conviction was illegal and that the minimum permissible sentence for this crime was 2 to 4 years in prison. Defense counsel indicated that this slightly greater sentence was acceptable to defendant, and defendant's written waiver of the right to appeal was amended accordingly. County Court then imposed upon defendant concurrent prison sentences of 6½ years followed by two years of postrelease supervision on the controlled substance conviction and 2 to 4 years on the weapon conviction. Defendant appeals.

Appellate counsel seeks to be relieved of his assignment of representing defendant on the ground that there are no nonfrivolous issues that may be raised on appeal. Upon reviewing the record, counsel's brief and defendant's pro se submission, we disagree. We find that there is at least one issue of arguable merit with respect to the validity of defendant's appeal waiver that may potentially impact other issues that may be raised, such as the severity of the sentence (see People v Tietje, 166 AD3d 1079, 1079 [2018]). Notably, appellate counsel fails to even mention the sentencing change in his brief. Therefore, without passing judgment on the ultimate merits of this issue or any others, we grant counsel's request for leave to withdraw and assign new counsel to address this issue and any others that the record may disclose (see People v Beaty, 22 NY3d 490, 492-493 [2014]; People v Stokes, 95 NY2d 633 [2001]; see generally People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]).

Lynch, J.P., Clark, Devine, Aarons and Rumsey, 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