

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

Decided and Entered: March 5, 2020

109842

---

THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

KRISTEN BISHOP,

Appellant.

---

Calendar Date: February 7, 2020

Before: Garry, P.J., Lynch, Devine, Pritzker and Reynolds  
Fitzgerald, JJ.

---

Jeffrey L. Zimring, Albany, for appellant.

Paul Czajka, District Attorney, Hudson (James A. Carlucci  
of counsel), for respondent.

---

Appeal from a judgment of the County Court of Columbia  
County (Nichols, J.), rendered February 24, 2017, convicting  
defendant upon her plea of guilty of the crime of burglary in  
the second degree.

Defendant waived indictment and agreed to be prosecuted by  
a superior court information charging her with burglary in the  
second degree and grand larceny in the fourth degree. She  
pleaded guilty to burglary in the second degree in satisfaction  
thereof and waived her right to appeal. Under the terms of the  
plea agreement, she was to be sentenced to 3½ years in prison,  
followed by five years of postrelease supervision. County Court  
advised defendant that she was to cooperate with the Probation

Department in preparing a presentence investigation report and her failure to do so would be taken into consideration in sentencing. Defendant subsequently failed to appear for her presentence investigation interview and, as a result, County Court sentenced her to 4½ years in prison, followed by five 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 that may be raised on appeal. Based upon our review of the record and counsel's brief, we disagree. We find that there are issues of arguable merit relating to the validity of the appeal waiver and sentence enhancement that warrant further consideration. Accordingly, without passing on the merits of these 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 Beaty, 22 NY3d 490, 492-493 [2014]; People v Stokes, 95 NY2d 633 [2001]; People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]).

Garry, P.J., Lynch, Devine, Pritzker and Reynolds  
Fitzgerald, J.J., concur.

ORDERED that the decision is withheld, application to be relieved of assignment granted and new counsel to be assigned.

ENTER:



Robert D. Mayberger  
Clerk of the Court