

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

Decided and Entered: August 3, 2017

107514

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

CHARLES W. TOLAND JR.,
Appellant.

Calendar Date: June 12, 2017

Before: Egan, J.P., Lynch, Rose, Aarons and Rumsey, JJ.

Kelly M. Monroe, Albany, for appellant, and appellant
pro se.

Robert M. Carney, District Attorney, Schenectady (Tracey A.
Brunecz of counsel), for respondent.

Appeal from an order of the County Court of Schenectady
County (Loyola, J.), entered January 30, 2015, which denied
defendant's motion pursuant to CPL 440.30 (1-a) for the
performance of forensic DNA testing on specified evidence.

In 1996, defendant was convicted following a jury trial of
a number of crimes, the most serious of which was murder in the
second degree, in connection with the death of a woman whose body
was found in the basement of an apartment building in Schenectady
County. His conviction was affirmed on appeal with a modified
sentence, and he is serving an aggregate prison term of 30 years
to life (People v Toland, 284 AD2d 798 [2001], lv denied 96 NY2d
942 [2001]). In 2014, defendant, among other things, made a pro
se motion pursuant to CPL 440.30 (1-a) for forensic DNA testing

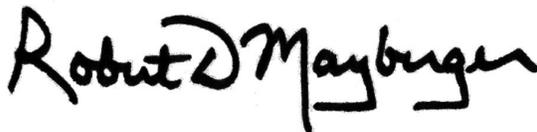
of certain hair fragments that were found on the victim.¹ The People opposed the motion, and it was denied by County Court. Defendant appeals.

Appellate counsel seeks to be relieved of her 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, counsel's brief and defendant's pro se submission, we agree (see People v Humphrey, 92 AD3d 1024, 1025 [2012]; see also People v Pugh, 288 AD2d 634, 634-635 [2001], lv denied 91 NY2d 976 [1998]). Therefore, the order is affirmed, and counsel's request for leave to withdraw is granted (see People v Stokes, 95 NY2d 633 [2001]; People v Cruwys, 113 AD2d 979 [1985], lv denied 67 NY2d 650 [1986]).

Egan Jr., J.P., Lynch, Rose, Aarons and Rumsey, JJ.,
concur.

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

ENTER:



Robert D. Mayberger
Clerk of the Court

¹ This is defendant's fourth CPL article 440 motion, as he made three prior motions seeking different relief that were denied, as well as an application for a writ of error coram nobis and a federal habeas corpus application that also were denied.