

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

Decided and Entered: November 1, 2018

109307

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

GREGORY P. TIETJE,

Appellant.

Calendar Date: September 18, 2018

Before: Devine, J.P., Clark, Mulvey, Rumsey and Pritzker, JJ.

Kathy Manley, Selkirk, for appellant.

D. Holley Carnright, District Attorney, Kingston (Joan Gudesblatt Lamb of counsel), for respondent.

Appeal from a judgment of the County Court of Ulster County (Williams, J.), rendered February 24, 2017, convicting defendant upon his plea of guilty of the crime of driving while intoxicated.

In satisfaction of a four-count indictment, defendant pleaded guilty to driving while intoxicated as a felony and purportedly waived his right to appeal. County Court thereafter sentenced him to a prison term of 2 to 6 years, with the sentence to run consecutively to any previously imposed sentences. Defendant now 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 upon appeal. We disagree. Our review of the record discloses an issue of arguable merit regarding the validity of defendant's appeal waiver that may implicate other potential appellate issues, such as the severity of the sentence (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Torres, 157 AD3d 1126, 1127 [2018]). Accordingly, without passing judgment on the merits of this issue, we grant counsel's application 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]).

Devine, J.P., Clark, Mulvey, Rumsey and Pritzker, 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