

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

Decided and Entered: October 17, 2019

109535

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

WILLIE Q. MAYHEW,

Appellant.

Calendar Date: October 4, 2019

Before: Egan Jr., J.P., Clark, Mulvey and Aarons, JJ.

Lisa A. Burgess, Indian Lake, for appellant, and appellant
pro se.

Weeden A. Wetmore, District Attorney, Elmira (Susan Rider-
Ulacco of counsel), for respondent.

Appeal from a judgment of the County Court of Chemung
County (Hayden, J.), rendered September 19, 2016, convicting
defendant upon his plea of guilty of the crime of criminal
possession of a weapon in the second degree.

Defendant pleaded guilty to criminal possession of a
weapon in the second degree in satisfaction of a four-count
indictment, apparently while his suppression motion was pending.
He was sentenced, as a second felony offender, to a prison term
of six years to be followed by five years of postrelease
supervision. Defendant appeals.

On appeal, defense counsel seeks to be relieved of her assignment as counsel for defendant on the ground that there are no nonfrivolous issues that can be raised on appeal. Upon our review of the record, defendant's pro se brief and counsel's brief, we disagree. To that end, we perceive several issues of arguable merit, including whether defendant forfeited his suppression motion, whether he was properly sentenced as a second felony offender and whether the sentence is harsh and excessive. Accordingly, without passing judgment on the ultimate merit of these or any other 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, 639 [2001]; People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]).

Egan Jr., J.P., Clark, Mulvey and Aarons, 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