

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

Decided and Entered: April 4, 2019

110240

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

JOSHUA B. FULLER,

Appellant.

Calendar Date: March 15, 2019

Before: Garry, P.J., Egan Jr., Lynch, Devine and Aarons, JJ.

Michael. T. Baker, Public Defender, Binghamton (Jake Buckland of counsel), for appellant.

Stephen K. Cornwell Jr., District Attorney, Binghamton (Stephen D. Ferri of counsel), for respondent.

Appeal from a judgment of the County Court of Broome County (Dooley, J.), rendered March 30, 2018, which revoked defendant's probation and imposed a sentence of imprisonment.

Defendant pleaded guilty to grand larceny in the third degree and was sentenced to five years of probation. Thereafter, defendant admitted to violating the terms of his probation. County Court revoked defendant's probation and sentenced him to a prison term of 2 to 7 years. 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 our review of the record, however, we perceive at least one issue of arguable merit pertaining to the harshness of the sentence that warrants further review. Accordingly, without passing judgment on the ultimate merit 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, 493 [2006]; People v Stokes, 95 NY2d 633 [2001]; see generally People v Cruwys, 113 AD2d 979 [1985], lv denied 67 NY2d 650 [1986]).

Garry, P.J., Egan Jr., Lynch, Devine 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