

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

Decided and Entered: March 4, 2021

109977

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MINDY VEZEQU,

Appellant.

Calendar Date: February 4, 2021

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

Stephen W. Herrick, Public Defender, Albany (Steven M. Sharp of counsel), for appellant.

P. David Soares, District Attorney, Albany (Christopher D. Horn of counsel), for respondent.

Appeal from a judgment of the County Court of Albany County (Lynch, J.), rendered March 21, 2017, convicting defendant upon her plea of guilty of the crime of attempted criminal sale of a controlled substance in the third degree.

Defendant pleaded guilty to attempted criminal sale of a controlled substance in the third degree. Pursuant to the terms of the plea agreement, defendant was required to waive her right to appeal. County Court sentenced defendant, as a second felony offender, to three years in prison, to be followed by three years of postrelease supervision. Defendant appeals.

Defense counsel seeks to be relieved of his 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 and defense counsel's brief, we disagree. There is at least one issue of arguable merit relating to County Court's failure to exercise its discretion concerning defendant's request for judicial diversion (see People v Conley, 161 AD3d 1486, 1487 [2018]). 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, 492-493 [2014]; People v Stokes, 95 NY2d 633, 638-639 [2001]; People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]).

Garry, P.J., Egan Jr., Clark, Aarons and Colangelo, 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