

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

Decided and Entered: September 23, 2021

110394

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MICHAEL DYE,

Appellant.

Calendar Date: September 3, 2021

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

Donnial K. Hinds, Albany, 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 (Carter, J.), rendered March 29, 2018, 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, and he was required to waive the
right to appeal. County Court thereafter sentenced defendant to
10 years in prison, to be followed by five years of postrelease
supervision. Defendant appeals.

Appellate counsel seeks to be relieved of his assignment
of representing defendant on the ground that there are no

nonfrivolous issues that can be raised on appeal. Upon our review of the record and counsel's brief, we disagree. We find that there is at least one issue of arguable merit with respect to the validity of defendant's appeal waiver that may potentially impact other issues that may be raised, such as the severity of the sentence (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Morehouse, 173 AD3d 1458, 1459 [2019]). 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]; see generally People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]).

Egan Jr., J.P., Clark, Aarons, Pritzker 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