

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

Decided and Entered: July 14, 2022

110299

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

FRANK CHRYSLER,

Appellant.

Calendar Date: June 17, 2022

Before: Garry, P.J., Egan Jr., Ceresia, Fisher and McShan, JJ.

Jeffrey L. Zimring, Albany, for appellant.

P. David Soares, District Attorney, Albany (Vincent Stark of counsel), for respondent.

Appeal from a judgment of the Supreme Court (McDonough, J.), rendered January 12, 2018 in Albany County, convicting defendant upon his plea of guilty of the crime of grand larceny in the third degree as a hate crime.

In satisfaction of a multi-count indictment, defendant pleaded guilty to grand larceny in the third degree as a hate crime and agreed to waive his right to appeal. Supreme Court sentenced defendant, as a second felony offender, in accordance with the plea agreement to a prison term of 6 to 12 years and, among other things, imposed restitution. Defendant appeals.

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

nonfrivolous issues to be raised on appeal. Upon our review of the record and defense counsel's brief, we perceive at least one issue of arguable merit pertaining to the validity of the waiver of the right to appeal that may potentially impact other issues to be raised (see People v Griffen, 200 AD3d 1195, 1195-1196 [2021], lv denied 37 NY3d 1161 [2022]; People v Morehouse, 173 AD3d 1458, 1459 [2019]). Accordingly, without passing judgment on the ultimate merit of that issue or any others, 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]).

Garry, P.J., Egan Jr., Ceresia, Fisher and McShan, 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