

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

Decided and Entered: September 15, 2022

111553

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

SHACREAM MORRIS-CALDWELL,
Appellant.

Calendar Date: September 2, 2022

Before: Egan Jr., J.P., Clark, Aarons, Reynolds Fitzgerald and
McShan, JJ.

Stephen W. Herrick, Public Defender, Albany (James
Bartosik Jr. of counsel), for appellant.

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

Appeal from a judgment of the County Court of Albany
County (William A. Carter, J.), rendered November 8, 2018,
convicting defendant upon his plea of guilty of the crime of
attempted criminal possession of a weapon in the second degree.

Defendant pleaded guilty to a superior court information
charging him with attempted criminal possession of a weapon in
the second degree and purportedly waived the right to appeal.
County Court thereafter sentenced defendant to five 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 may be raised on appeal. Based upon our review of the record, we find issues of arguable merit pertaining to the validity of the waiver of the right to appeal that may impact other issues that may be raised, such as the severity of the sentence imposed (*see People v Williams*, 204 AD3d 1161, 1162 [3d Dept 2022]). Accordingly, without passing judgment on the ultimate merit of these 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, 638–639 [2001]; *see generally People v Cruwys*, 113 AD2d 979, 980 [3d Dept 1985], *lv denied* 67 NY2d 650 [1986]).

Egan Jr., J.P., Clark, Aarons, Reynolds Fitzgerald 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, reading "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court