

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

Decided and Entered: June 9, 2022

112995

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MICHAEL RODRIGUEZ,

Appellant.

Calendar Date: May 20, 2022

Before: Garry, P.J., Clark, Pritzker, Reynolds Fitzgerald and
McShan, JJ.

Tina Sodhi, Alternate 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 (Carter, J.), rendered March 30, 2021, convicting
defendant upon his plea of guilty of the crime of attempted
criminal possession of a controlled substance in the third
degree.

Defendant pleaded guilty to a superior court information
charging him with attempted criminal possession of a controlled
substance in the third degree and purportedly waived the right
to appeal. County Court thereafter sentenced defendant to 1½
years in prison, to be followed by 1½ 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 Stratton, 201 AD3d 1201, 1202 [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 [1985], lv denied 67 NY2d 650 [1986]).

Garry, P.J., Clark, Pritzker, 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 that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court