

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

Decided and Entered: October 17, 2024

112777

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MESSIAH M. BRYAN,

Appellant.

Calendar Date: October 4, 2024

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

Dennis J. Lamb, Troy, for appellant.

Mary Pat Donnelly, District Attorney, Troy (*Lauren D. Konsul* of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Andrew G. Ceresia, J.), rendered June 17, 2019 in Rensselaer County, convicting defendant upon his plea of guilty of the crime of disseminating indecent material to a minor in the first degree.

In satisfaction of a two-count indictment, defendant pleaded guilty to disseminating indecent material to a minor in the first degree and waived his right to appeal, with the understanding that he would be sentenced to six months in jail, to be followed by five years of probation. At a subsequent appearance, defendant was informed that the crime to which he pleaded guilty required him to register as a sex offender and that an enhanced surcharge was required. Based upon this new information, Supreme Court afforded defendant an opportunity to withdraw his plea, which defendant declined

and indicated that he wished to move forward with the plea agreement. Prior to sentencing, defendant was arrested.

Thereafter, defendant unsuccessfully moved to withdraw his plea. Following an *Outley* hearing regarding his arrest following his guilty plea, Supreme Court found that defendant violated the terms of the plea agreement and imposed an enhanced sentence of 1 to 3 years in prison. Defendant appeals.

Appellate counsel seeks to be relieved of the assignment of representing defendant upon 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 disagree. We find issues of arguable merit, including whether defendant's motion to withdraw his plea was properly denied and whether his waiver of his right to appeal is valid, which, in turn, may impact other issues that may be raised, such as the severity of the enhanced sentence imposed. Accordingly, and 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]).

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

Robert D. Mayberger
Clerk of the Court