

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

Decided and Entered: May 16, 2024

113301

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

RAYVON T. McNEALY,

Appellant.

Calendar Date: April 30, 2024

Before: Clark, J.P., Aarons, Pritzker, Lynch and Ceresia, JJ.

Kathy Manley, Selkirk, for appellant.

F. Paul Battisti, District Attorney, Binghamton (*Joann Rose Parry* of counsel), for respondent.

Lynch, J.

Appeal from a judgment of the County Court of Broome County (Kevin P. Dooley, J.), rendered December 22, 2021, upon a verdict convicting defendant of the crimes of sexual abuse in the first degree (two counts) and endangering the welfare of a child.

Defendant was charged by indictment with four counts of sexual abuse in the first degree and endangering the welfare of a child in connection with allegations that he subjected a seven-year-old victim to sexual contact on four occasions between August 2020 and November 2020. By the time of trial, two sexual abuse charges and the endangering the welfare charge remained. Following a jury trial, defendant was convicted

of these remaining charges and sentenced to concurrent terms of imprisonment, resulting in an aggregate prison sentence of three years, with 10 years of postrelease supervision. Defendant appeals.

During oral argument on this appeal, the Chief Assistant District Attorney (hereinafter ADA) who appeared on behalf of the People confirmed that she served as the confidential law clerk to the County Court Judge who presided over this matter and did so at the time of the underlying trial. Oral argument was permitted to proceed on the merits, but the Court directed the parties to submit letter briefs addressing the impact, if any, of the ADA's prior position on her ability to represent the People on appeal. Two days later, this Court handed down *People v Pica Torres* (___ AD3d ___, 2024 NY Slip Op 02345, *1-2 [3d Dept 2024]), which determined that a similar conflict situation required the appointment of a special prosecutor to handle the appeal. In her responding letter brief, the ADA acknowledges that she was personally and substantially involved in this matter as the trial judge's law clerk, raising a conflict of interest under Rule 1.12 of the Rules of Professional Conduct (*see* Rules of Prof Conduct [22 NYCRR 1200.00] rule 1.12 [d] [1]). In her responding letter, counsel for defendant acknowledges that the appointment of a special prosecutor is required. Given the foregoing, we remit the matter for the expeditious appointment of a special prosecutor to handle this appeal.

Clark, J.P., Aarons, Pritzker and Ceresia, JJ., concur.

ORDERED that the decision is withheld, and matter remitted to the County Court of Broome County for further proceedings not inconsistent with this Court's decision.

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