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

Decided and Entered: July 24, 2014 105512

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
v MEMORANDUM AND ORDER

JUAN STEPHAN McCRAY,
Appellant.

Calendar Date: June 9, 2014

Before: Peters, P.J., Stein, Garry, Rose and Lynch, JJ.

G. Scott Walling, Queensbury, for appellant.

Robert M. Carney, District Attorney, Schenectady (Gerald A. Dwyer of counsel), for respondent.

Appeal from a judgment of the County Court of Schenectady County (Giardino, J.), rendered August 13, 2010, convicting defendant upon his plea of guilty of the crimes of burglary in the first degree and assault in the first degree.

In satisfaction of a 16-count indictment, defendant pleaded guilty to burglary in the first degree and assault in the first degree and waived his right to appeal. In accordance with the plea agreement, County Court agreed to sentence defendant, as a persistent violent felony offender, to concurrent prison terms of 22 years to life. Defendant now appeals.

Appellate counsel for defendant seeks to be relieved of his assignment on the ground that there are no nonfrivolous issues that can be raised on appeal. Upon our review of the record and counsel's brief, however, we perceive at least one issue of

arguable merit pertaining to the validity of defendant's appeal waiver which, in turn, may affect other potential issues (see People v Slavin, 114 AD3d 1082, 1082 [2014]; People v March, 107 AD3d 1160, 1161 [2013]). Thus, without offering any opinion as to the ultimate merit of that argument, we grant counsel's application and assign new counsel to address this issue and any others that the record may disclose (see People v Stokes, 95 NY2d 633, 636 [2001]; People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]).

Peters, P.J., Stein, Garry, Rose and Lynch, JJ., concur.

ORDERED that the decision is withheld, application to be relieved of assignment granted and new counsel to be assigned.

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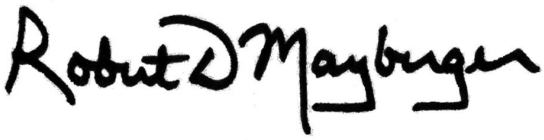

Robert D. Mayberger
Clerk of the Court