

# State of New York Court of Appeals

BEFORE: HONORABLE PAUL G. FEINMAN  
Associate Judge

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Respondent,

ROARK (FRANK),

Appellant.

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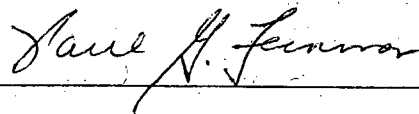
**ORDER  
DENYING  
LEAVE**

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure  
Law § 460.20 from an order in the above-captioned case;\*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: September 20, 2019



Associate Judge

\*Description of Order: Order of the Appellate Division, Third Department, entered August 1, 2019, affirming a judgment of the County Court, Schenectady County, rendered January 9, 2018.

e.g., "Appendix A"

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

Decided and Entered: August 1, 2019

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

FRANK ROARK,

Appellant.

Calendar Date: June 21, 2019

Before: Garry, P.J., Egan Jr., Clark, Aaronson and Rumsey, JJ.

G. Scott Walling, Slingerlands, for appellant, and  
appellant pro se.

Robert M. Carney, District Attorney, Schenectady (Peter H.  
Willis of counsel), for respondent.

Appeal from a judgment of the County Court of Schenectady  
County (Sypniewski, J.), rendered January 9, 2018, convicting  
defendant upon his plea of guilty of the crime of criminal  
possession of a weapon in the second degree.

Defendant pleaded guilty to criminal possession of a  
weapon in the second degree in satisfaction of a multicount  
indictment. He also waived his right to appeal, both orally and  
in writing. In accordance with the terms of the plea agreement,  
defendant was sentenced as a second felony offender to six years  
in prison followed by five years of postrelease supervision. He  
appeals.

e.g., "Appendix A"

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, counsel's brief and defendant's pro se submissions, we agree. Therefore, the judgment is affirmed and counsel's request for leave to withdraw is granted (see People v Cruwys, 113 AD2d 979, 980 [1985], lv denied 67 NY2d 650 [1986]; see generally People v Beaty, 22 NY3d 490 [2014]; People v Stokes, 95 NY2d 633 [2001]).

Garry, P.J., Egan Jr., Clark, Aarons and Rumsey, JJ.,  
concur.

ORDERED that the judgment is affirmed, and application to be relieved of assignment granted.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, flowing style.

Robert D. Mayberger  
Clerk of the Court

e.g., "Appendix A"

STATE OF NEW YORK  
COUNTY COURT

COUNTY OF SCHENECTADY

THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION AND ORDER  
Indictment No. A-217-8

**FRANK ROARK**

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APPEARANCES:

For the People:

Hon. Robert M. Carney, District Attorney  
by: Peter Willis, Esq.  
Assistant District Attorney

For the Defendant:

Pro Se

**SYPNIEWSKI, J.**

Defendant moves to vacate his conviction pursuant to CPL 440.10 alleging prosecutorial misconduct in the form of withheld evidence, insufficient indictment, improper joinder and a coerced plea. The People have opposed.

Defendant was charged in this Indictment with two counts of Criminal Possession of a Weapon in the Second degree and one count of Criminal Possession of a Weapon in the Third Degree. On October 24, 2017 defendant pleaded guilty to one count of Criminal Possession of a Weapon in the Second Degree and was sentenced on January 9, 2018 to the agreed upon sentence of six years of incarceration and five years of post-release supervision.

The Court has reviewed the allegations of the defendant and finds the issues raised by the defendant to be made solely by the defendant and is unsupported by any other evidence. Defendant does not identify what evidence the People withheld or how

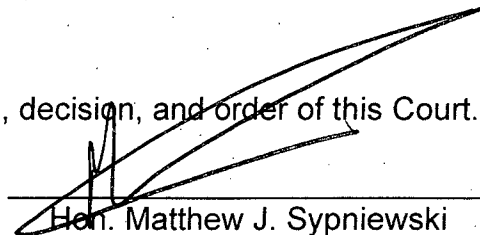
e.g., "Appendix B"

his plea was coerced. Defendant's motion is denied pursuant to CPL 440.30(4)(d).

Defendant's argument that the indictment was insufficient and that joinder was improper could have been raised on appeal, but were not and are therefore denied pursuant to CPL 440.10(2)(c). Motion denied.

Defendant may seek leave to appeal this Decision and Order pursuant to CPL Sections 450.15 and 460.15.

The foregoing constitutes the opinion, decision, and order of this Court.

  
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Hon. Matthew J. Sypniewski  
Schenectady County Court Judge

Schenectady, New York  
Dated: December 23, 2019

e.g., "Appendix B"