

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

Decided and Entered: December 29, 2011

103563

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

CHRISTOPHER L. MILLER,
Appellant.

Calendar Date: November 16, 2011

Before: Peters, J.P., Rose, Kavanagh, McCarthy and Garry, JJ.

John A. Cirando, Syracuse, for appellant.

Nicole M. Duve, District Attorney, Canton (Jonathan Becker of counsel), for respondent.

McCarthy, J.

Appeal from a judgment of the County Court of St. Lawrence County (Richards, J.), rendered July 27, 2010, which revoked defendant's probation and imposed a sentence of imprisonment.

In April 2007, defendant was sentenced to 10 years of probation following his conviction of rape in the third degree. Between January 2008 and May 2009, defendant was charged with and admitted to violating the terms of his probation three times. On each occasion, defendant's term of probation was extended. In May 2010, a fourth violation of probation petition was filed. Defendant admitted to violating the conditions of his probation by failing to report to his probation officer as required, failing to submit to drug testing and failing to cooperate with recommended substance abuse treatment. County Court revoked

defendant's probation and sentenced him to a prison term of 1 to 4 years. Defendant now appeals.

We affirm. Defendant's claim that his guilty plea to the violation petition was not knowingly, intelligently and voluntarily entered is unpreserved for our review in light of defendant's failure to move to withdraw his plea or vacate the judgment of conviction (see People v Cerone, 75 AD3d 835, 835-836 [2010], lv denied 15 NY3d 850 [2010]; People v Diaz, 26 AD3d 644, 645 [2006], lv denied 7 NY3d 755 [2006]). In any event, County Court advised defendant of the ramifications of pleading guilty and defendant acknowledged his understanding and that he was entering his plea voluntarily. Defendant affirmatively stated that the medications he was taking did not affect his ability to comprehend the proceedings and there is nothing in the record to indicate that his plea was not knowing, intelligent and voluntary (see People v Gomez, 72 AD3d 1337, 1338 [2010]; People v Williamson, 301 AD2d 860, 861-862 [2003], lv denied 100 NY2d 567 [2003]).

Defendant's contention that County Court erred in sentencing him without an updated presentence report is also unpreserved for our review, due to his failure to request an updated report, raise an objection at sentencing or move to vacate the judgment (see People v Clark, 80 AD3d 1079, 1079 [2011]; People v Ruff, 50 AD3d 1167, 1168 [2008]). Finally, we reject defendant's claim that his sentence was harsh and excessive, given his repeated violations of the terms of probation and the absence of extraordinary circumstances warranting a reduction in the sentence (see People v DeMarco, 60 AD3d 1107, 1109 [2009]).

Peters, J.P., Rose, Kavanagh and Garry, JJ., concur.

ORDERED that the judgment is affirmed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive style with a large, prominent "R" at the beginning and a long, sweeping underline at the end.

Robert D. Mayberger
Clerk of the Court