

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

Decided and Entered: June 28, 2012

103878

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

LESLIE MARSHALL,

Appellant.

Calendar Date: May 21, 2012

Before: Rose, J.P., Spain, Malone Jr., Kavanagh and
Egan Jr., JJ.

Cliff Gordon, Monticello, for appellant.

James R. Farrell, District Attorney, Monticello (Bonnie M.
Mitzner of counsel), for respondent.

Kavanagh, J.

Appeal from a judgment of the County Court of Sullivan
County (LaBuda, J.), entered October 19, 2010, convicting
defendant upon his plea of guilty of the crime of robbery in the
second degree.

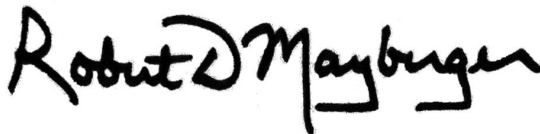
Upon defendant's plea of guilty to the crime of robbery in
the second degree, he was sentenced, as a second felony offender,
to eight years in prison with five years of postrelease
supervision. On this appeal, he argues that he was entitled to a
hearing to determine whether the prior conviction relied upon by
County Court qualifies him as a second felony offender. However,
this argument is encompassed by his valid appeal waiver (see
People v Callahan, 80 NY2d 273, 281 [1992]; People v Korber, 89

AD3d 1543, 1544 [2011], lv denied ___ NY3d ___ [May 4, 2012]; People v Taylor, 73 AD3d 1285, 1286 [2010], lv denied 15 NY3d 810 [2010]) and, in any event, is unpreserved due to his failure to object at sentencing (see People v Smith, 89 AD3d 1328, 1328-1329 [2011]; People v Califano, 84 AD3d 1504, 1506 [2011], lv denied 17 NY3d 805 [2011]).

Rose, J.P., Spain, Malone Jr. and Egan Jr., 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, slightly slanted style.

Robert D. Mayberger
Clerk of the Court