

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

Decided and Entered: June 7, 2012

104234
104235

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

THOMAS S. KEATING, Also
Known as TOMAS KEATING,
Appellant.

Calendar Date: April 24, 2012

Before: Peters, P.J., Lahtinen, Spain, Kavanagh and
McCarthy, JJ.

M. Elizabeth Coreno, Saratoga Springs, for appellant.

Kevin C. Kortright, District Attorney, Fort Edward (Andrew
J. Proler of counsel), for respondent.

Peters, P.J.

Appeal from a judgment of the County Court of Washington
County (McKeighan, J.), rendered April 8, 2011, convicting
defendant upon his plea of guilty of the crimes of attempted
disseminating indecent material to minors in the first degree and
failure to register under the Sex Offender Registration Act.

Pursuant to an agreement resolving two indictments against
him, defendant waived his right to appeal in each case and
pleaded guilty to attempted disseminating indecent material to
minors in the first degree and failure to register under the Sex
Offender Registration Act. County Court thereafter denied

defendant's motion to withdraw the plea and imposed the agreed-upon aggregate prison sentence of 2 $\frac{2}{3}$ to 7 years. Defendant appeals.

Defendant knowingly, intelligently and voluntarily waived his right to appeal in both cases. During the combined plea allocution, County Court distinguished the right to appeal from those rights forfeited by pleading guilty. Defendant then stated that he understood the consequences of waiving his right to appeal, discussed the written appeal waivers with counsel to his satisfaction, and executed them in open court. Thus, we reject defendant's contentions that he did not comprehend the rights he was giving up, or that County Court was obliged to address the written waivers separately during the colloquy (see People v Budwick, 82 AD3d 1447, 1448 [2011], lv denied 17 NY3d 857 [2011]; People v Vaughns, 70 AD3d 1123, 1124 [2010], lv denied 15 NY3d 758 [2010]).

Defendant's challenge to County Court's denial of his oral application to withdraw his guilty plea, which survives his appeal waivers (see People v Shurock, 83 AD3d 1342, 1343 [2011]), is without merit. During the plea colloquy, defendant was fully apprised of the terms of the plea agreement and the rights he would be giving up, discussed the ramifications of pleading guilty with counsel, expressed his understanding of them and freely elected to proceed. Defendant further declared himself to be satisfied with defense counsel during the colloquy, notwithstanding his prior concerns about counsel's performance. Indeed, defendant pointed to no specific basis for his motion to withdraw, instead asserting in conclusory fashion that "all of the facts and circumstances" of the case supported it. Inasmuch as nothing in the record suggests that defendant's guilty plea was anything less than knowing, voluntary and intelligent, County Court properly denied his application without conducting any further inquiry (see CPL 220.60 [3]; People v Carmona, 66 AD3d 1240, 1241 [2009], lv denied 14 NY3d 799 [2010]; People v Smith, 270 AD2d 719, 720 [2000]).

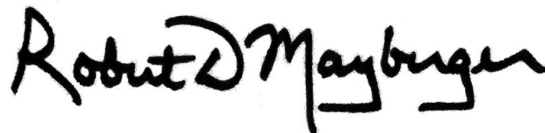
We have examined defendant's ineffective assistance of counsel claim and, to the extent it implicates the voluntariness

of his plea and thus survives his appeal waiver, find it to be without merit.

Lahtinen, Spain, Kavanagh and McCarthy, 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 with a large, prominent "R" at the beginning.

Robert D. Mayberger
Clerk of the Court