

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

Decided and Entered: June 20, 2013

104720

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ROBERT F. EGLOFF JR.,

Appellant.

Calendar Date: May 6, 2013

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

Stanley Walker, Loudonville, for appellant.

Gerald F. Mollen, District Attorney, Binghamton (Joshua S. Shapiro of counsel), for respondent.

Appeal from a judgment of the County Court of Broome County (Smith, J.), rendered October 20, 2011, which revoked defendant's probation and imposed a sentence of imprisonment.

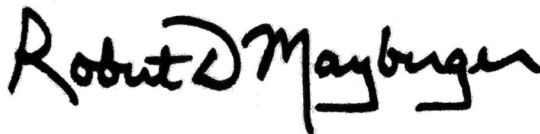
Following defendant's plea of guilty to the crime of driving while intoxicated (hereinafter DWI), as a felony, he was sentenced to, among other things, 30 days in jail to be served intermittently on weekends and five years of probation. The conditions of probation were made known to him. Thereafter, a petition was filed against defendant alleging violations of the conditions of probation. Subsequently, defendant pleaded guilty to violating multiple terms of his probation. Defendant's probation was revoked and he was sentenced to 2 to 6 years in prison. Defendant now appeals.

We affirm. Defendant's sole argument on appeal is that his sentence is harsh and excessive. The record confirms, however, that, despite being given repeated opportunities to succeed on probation, he was unable to abide by the conditions imposed, including that he refrain from, among other things, consuming alcohol. County Court carefully considered all mitigating factors, including defendant's relapsed alcoholism, his extensive criminal history including three prior DWI convictions and the fact that he was on probation for a prior DWI at the time he committed the underlying DWI in issue. Under these circumstances, "we find no abuse of discretion nor any extraordinary circumstances warranting a reduction of the resentence in the interest of justice" (People v Campbell, 79 AD3d 1458, 1458 [2010], lv denied 16 NY3d 829 [2011]; see People v Holland, 95 AD3d 1504, 1505 [2012], lv denied 19 NY3d 974 [2012]; People v Kirk, 87 AD3d 1205, 1205 [2011]).

Peters, P.J., Rose, Spain 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