

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

Decided and Entered: November 13, 2014

106032

106064

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

CODEY A. ROYCE,

Appellant.

Calendar Date: October 6, 2014

Before: Lahtinen, J.P., McCarthy, Egan Jr., Devine and
Clark, JJ.

Lisa A. Burgess, Indian Lake, for appellant.

Mary E. Rain, District Attorney, Canton (Patricia C.
Campbell, Syracuse, of counsel), for respondent.

Clark, J.

Appeal from a judgment of the County Court of St. Lawrence County (Richards, J.), rendered April 3, 2013, convicting defendant upon his plea of guilty of the crimes of robbery in the second degree and attempted burglary in the second degree.

Defendant was charged in two indictments with various crimes arising from his theft of property on two separate occasions. In satisfaction of these indictments and other pending charges, defendant pleaded guilty to robbery in the second degree and attempted burglary in the second degree and waived his right to appeal. In accordance with the terms of the plea agreement, County Court imposed concurrent sentences of five

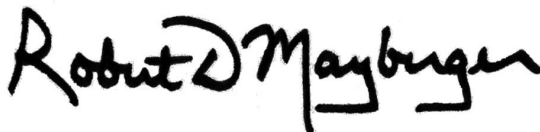
years in prison and five years of postrelease supervision on the robbery conviction, and three years in prison and three years of postrelease supervision on the burglary conviction. Defendant now appeals.

Defendant contends that his guilty plea was not knowing, voluntary and intelligent because County Court failed to advise him that he would be subject to an enhanced sentence as a second felony offender on any future felony conviction. Although this claim survives his waiver of appeal, defendant has failed to preserve it by making an appropriate postallocation motion (see People v Leach, 119 AD3d 1429, 1430 [2014], lv denied 24 NY3d 962 [2014]; People v Tole, 119 AD3d 982, 983 [2014]; People v Monk, 113 AD3d 999 [2014], lv denied 23 NY3d 1065 [2014]). Moreover, given that defendant did not make any statements inconsistent with his guilt when entering his plea, the narrow exception to the preservation requirement is inapplicable (see People v Monk, 113 AD3d at 999; People v Dobrouch, 59 AD3d 781, 781-782 [2009], lv denied 12 NY3d 853 [2009]). Therefore, the judgment must be affirmed.

Lahtinen, J.P., McCarthy, Egan Jr. and Devine, 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