

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

Decided and Entered: February 9, 2017

107432

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

EDWARD A. MILLARD,

Appellant.

Calendar Date: January 12, 2017

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

Sandra M. Colatosti, Albany, for appellant.

Stephen K. Cornwell Jr., District Attorney, Binghamton
(Stephen Ferri of counsel), for respondent.

Peters, P.J.

Appeal from a judgment of the County Court of Broome County (Cawley, J.), rendered January 10, 2012, convicting defendant upon his plea of guilty of the crime of criminal sexual act in the second degree.

Defendant waived indictment and pleaded guilty to a superior court information charging him with criminal sexual act in the second degree. He was sentenced in accordance with the plea agreement to six months in jail and 10 years of probation. Defendant appeals.

We affirm. Defendant's sole contention on appeal is that his plea was not knowing, voluntary and intelligent because County Court did not inquire whether he was under the influence

of drugs or alcohol during the plea colloquy. The record does not reflect that defendant made any postallocution motion so as to preserve the issue for our review and, given that defendant made no statements during the plea colloquy that were inconsistent with his guilt or the voluntariness of his plea, the narrow exception to the preservation requirement is inapplicable (see People v DeAngelo, 136 AD3d 1119, 1120 [2016]; People v Buie, 128 AD3d 1281, 1281 [2015]). In any event, nothing in the record suggests that defendant was under the influence of drugs or alcohol during the plea colloquy (see People v Buie, 128 AD3d at 1281).

Egan Jr., Rose, Devine and Aarons, 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