

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

Decided and Entered: June 1, 2017

107522

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

HELEN B. EICKHOFF,

Appellant.

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Calendar Date: May 2, 2017

Before: Peters, P.J., Garry, Lynch, Clark and Aarons, JJ.

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Jay L. Wilber, Public Defender, Binghamton (Regina Cahill  
of counsel), for appellant.

Stephen K. Cornwell Jr., District Attorney, Binghamton  
(David M. Petrush of counsel), for respondent.

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Lynch, J.

Appeal from a judgment of the County Court of Broome County  
(Smith, J.), rendered November 13, 2014, convicting defendant  
upon her plea of guilty of the crime of grand larceny in the  
third degree.

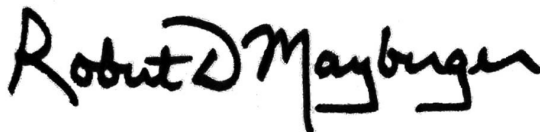
In satisfaction of an indictment charging her with grand  
larceny in the second degree and 33 counts of falsifying business  
records, defendant pleaded guilty to grand larceny in the third  
degree. Under the terms of the plea agreement, she was required  
to pay restitution and was to receive a sentence of no more than  
2½ to 7 years in prison. Defendant was subsequently sentenced  
to 2 to 6 years in prison and was ordered to pay restitution in  
the stipulated amount of \$128,876.61. She now appeals.

Initially, defendant's challenge to the amount of restitution ordered has not been preserved for our review given that she never objected or requested a restitution hearing and, through her counsel, consented to the amount that was ultimately included in the restitution order (see People v Musella, 148 AD3d 1465, 1467 [2017]; People v Casolo, 142 AD3d 1247, 1248 [2016], lv denied 28 NY3d 1143 [2017]). Moreover, her claim that she was denied the effective assistance of counsel is based on matters regarding the restitution award that are outside the record and is, therefore, more properly the subject of a CPL article 440 motion (see People v Garry, 133 AD3d 1039, 1040 [2015], lv dismissed 27 NY3d 1046 [2016]; People v Davis, 114 AD3d 1003, 1003 [2014], lv denied 23 NY3d 962 [2014]). Lastly, we find no merit to defendant's contention that her sentence is harsh and excessive. Notwithstanding the fact that this was defendant's first criminal conviction, she abused a position of trust by secretly taking a substantial sum of money from her employer's business over a three-year period. In view of this, and given that she could have received an even longer sentence under the plea agreement, we find no extraordinary circumstances or any abuse of discretion warranting a reduction of the sentence in the interest of justice (see People v Adkins, 108 AD3d 943 [2013]).

Peters, P.J., Garry, Clark and Aarons, JJ., concur.

ORDERED that the judgment is affirmed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, stylized "R" and "M".

Robert D. Mayberger  
Clerk of the Court