

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

Decided and Entered: June 22, 2017

107891

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

WALTER GEORGES,

Appellant.

Calendar Date: April 27, 2017

Before: Peters, P.J., Garry, Devine, Mulvey and Aarons, JJ.

G. Scott Walling, Schenectady, for appellant.

Robert M. Carney, District Attorney, Schenectady (Peter H. Willis of counsel), for respondent.

Aarons, J.

Appeal from a judgment of the County Court of Schenectady County (Loyola, J.), rendered July 22, 2015, convicting defendant upon his plea of guilty of the crime of criminal possession of a controlled substance in the third degree.

In satisfaction of an eight-count indictment, defendant pleaded guilty to criminal possession of a controlled substance in the third degree and waived his right to appeal, both orally and in writing. In accordance with the terms of the plea agreement, he was sentenced as a second felony offender to four years in prison and three years of postrelease supervision. He now appeals.

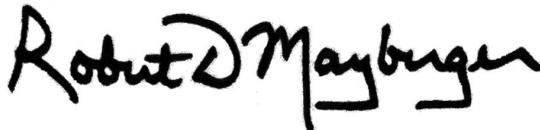
As an initial matter, we agree with defendant that his appeal waiver was invalid inasmuch as the record reveals that

defendant was not advised that the right to appeal was separate and distinct from the other rights that he was forfeiting by pleading guilty (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Herbert, 147 AD3d 1208, 1208 [2017]; People v Lloyd, 142 AD3d 1250, 1251 [2016], lv denied 28 NY3d 1073 [2016]). Defendant is therefore not precluded from challenging the severity of the imposed sentence (see People v Cox, 146 AD3d 1154, 1155 [2017]; People v Maxwell, 142 AD3d 739, 740 [2016]). We nevertheless find this challenge to be without merit. In view of defendant's multiple prior drug-related convictions, we discern no extraordinary circumstances nor any abuse of discretion warranting a reduction of the sentence in the interest of justice (see People v Slamp, 145 AD3d 1320, 1321 [2016]; People v Lloyd, 142 AD3d at 1251).

Peters, P.J., Garry, Devine and Mulvey, 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