

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

Decided and Entered: October 5, 2017

107990

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

RUBEN RODRIGUEZ,

Appellant.

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Calendar Date: September 8, 2017

Before: McCarthy, J.P., Egan Jr., Lynch, Devine and  
Pritzker, JJ.

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Theodore J. Stein, Woodstock, for appellant.

D. Holley Carnright, District Attorney, Kingston (Joan  
Gudesblatt Lamb of counsel), for respondent.

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McCarthy, J.P.

Appeal from a judgment of the County Court of Ulster County  
(Williams, J.), rendered July 30, 2015, convicting defendant upon  
his plea of guilty of the crime of burglary in the first degree.

In satisfaction of a five-count indictment, defendant  
pleaded guilty to burglary in the first degree and waived his  
right to appeal. In accordance with the terms of the plea  
agreement, he was sentenced as a second felony offender to 16  
years in prison to be followed by five years of postrelease  
supervision. Defendant now appeals.

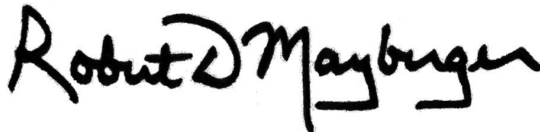
Defendant contends that his conviction is against the  
weight of the evidence because there was no proof that he entered

a dwelling armed with a deadly weapon. Inasmuch as defendant's conviction was the result of a guilty plea and not a trial, he is essentially challenging the factual sufficiency of the plea allocution. He is, however, precluded from doing so by his valid waiver of the right to appeal (see People v Zakrzewski, 140 AD3d 1536, 1537 [2016]; People v Blair, 140 AD3d 1478, 1479 [2016], lv denied 28 NY3d 927 [2016]). In addition, his claim has not been preserved for our review as the record does not disclose that he made an appropriate postallocution motion, and the exception to the preservation requirement is inapplicable given that defendant did not make any statements that cast doubt upon his guilt (see People v Blair, 140 AD3d at 1479; People v Larock, 139 AD3d 1241, 1242 [2016], lv denied 28 NY3d 932 [2016]). Finally, defendant's contention is belied by the record as he admitted during the plea colloquy that he unlawfully entered a dwelling and possessed a loaded gun at the time of the crime. Therefore, the judgment must be affirmed.

Egan Jr., Lynch, Devine and Pritzker, 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