

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

Decided and Entered: April 27, 2017

108045

108046

108047

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

GREGORY R. FIFIELD,

Appellant.

Calendar Date: February 28, 2017

Before: McCarthy, J.P., Garry, Lynch, Clark and Mulvey, JJ.

Susan Patnode, Rural Law Center of New York, Castleton
(Cynthia Feathers of counsel), for appellant.

Mary E. Rain, District Attorney, Canton (Matthew L. Peabody
of counsel), for respondent.

Appeal from a judgment of the County Court of St. Lawrence
County (Richards, J.), rendered June 29, 2015, (1) convicting
defendant upon his plea of guilty of the crimes of aggravated
unlicensed operation of a motor vehicle in the first degree and
driving while intoxicated, and (2) which revoked defendant's
probation and imposed a sentence of imprisonment.

In June 2014, defendant was sentenced to two concurrent
terms of five years of probation, resulting from a 2011
conviction for criminal contempt in the first degree and a 2012
conviction for attempted burglary in the third degree, after he
failed to successfully complete two one-year terms of interim
probation. In November 2014, defendant was charged with

violating his probation. While the resolution of this charge was pending, defendant was also charged with four counts of aggravated unlicensed operation of a motor vehicle in the first degree and two counts of driving while intoxicated. Pursuant to a plea agreement, defendant pleaded guilty to one count of unlicensed operation of a motor vehicle in the first degree and one count of driving while intoxicated and admitted to violating the conditions of his probation. He waived the right to appeal and County Court thereafter vacated defendant's probation and imposed the agreed-upon aggregate prison sentence of 2 to 6 years. Defendant now appeals.

We affirm. Contrary to defendant's contention, his waiver of the right to appeal was valid.¹ County Court distinguished the right to appeal from the rights automatically forfeited by a guilty plea and defendant affirmed his understanding of the waiver. Although defendant argues that his waiver did not encompass a challenge to the severity of his sentence, the record reflects that he signed a written waiver in open court, after reviewing it with counsel and affirming his understanding thereof, in which he expressly waived the right to argue that the sentence is harsh and excessive. Accordingly, defendant knowingly, intelligently and voluntarily waived the right to appeal his conviction and sentence (see People v Sommers, 140 AD3d 1537, 1538 [2016], lv denied 28 NY3d 974 [2016]; People v Butler, 134 AD3d 1349, 1349-1350 [2015], lvs denied 27 NY3d 962, 963 [2016]), and his sole remaining claim, that his sentence is harsh and excessive, is precluded from our review (see People v Moulton, 134 AD3d 1251, 1252 [2015]; People v King, 20 AD3d 580, 581 [2005], lv denied 5 NY3d 829 [2005]).

¹ To the extent that defendant also challenges the validity of appeal waivers from his convictions in 2011 and 2012, inasmuch as defendant did not appeal from those convictions, "any issues regarding defendant's original conviction[s] are not properly before us" (People v Daniels, 106 AD3d 1189, 1189 [2013], lv denied 21 NY3d 1014 [2013]; see People v Pozzi, 117 AD3d 1325, 1325 [2014]).

McCarthy, J.P., Garry, Lynch, Clark 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