

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

Decided and Entered: June 28, 2018

107897

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

FRANCISCO GONZALEZ,  
Appellant.

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Calendar Date: May 8, 2018

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

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G. Scott Walling, Slingerlands, for appellant.

J. Anthony Jordan, District Attorney, Fort Edward (Joseph A. Frandino of counsel), for respondent.

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Appeal from a judgment of the County Court of Washington County (McKeighan, J.), rendered October 10, 2013, convicting defendant upon his plea of guilty of the crime of criminal use of a firearm in the first degree.

In satisfaction of a multicount indictment, defendant pleaded guilty to criminal use of a firearm in the first degree stemming from an incident in which he fired several rounds of ammunition into the front door of a residential trailer, causing damage to that trailer and others nearby. As part of the agreement, defendant executed a waiver of appeal. Pursuant to the plea agreement, County Court sentenced defendant to a prison term of 14 years, to be followed by five years of postrelease supervision. Defendant appeals, contending that the sentence

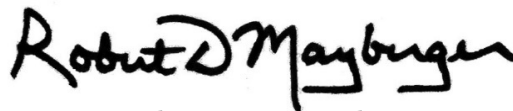
imposed was harsh and excessive.

Initially, the People concede, and we agree, that defendant's waiver of the right to appeal is invalid as County Court did not advise defendant that his appeal rights were separate and distinct from the rights automatically forfeited by his plea of guilty (see People v Lane, 159 AD3d 1195, 1195 [2018]; People v Metayeo, 155 AD3d 1239, 1240 [2017]; People v Roshia, 133 AD3d 1029, 1030 [2015], affd 28 NY3d 989 [2016]). Although defendant is thus not precluded by the waiver from challenging the severity of the sentence, we find his claim to be without merit. Given the nature of the crime, and that defendant consented to the sentencing range as part of the plea agreement, we find no extraordinary circumstances or abuse of discretion warranting a reduction of the sentence in the interest of justice (see People v Blanco, 156 AD3d 945, 946 [2017]; People v Cox, 146 AD3d 1154, 1155 [2017]).

Garry, P.J., McCarthy, Egan Jr., Lynch and Clark, 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