

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

Decided and Entered: June 14, 2018

108474

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

DERRICK GRAY, Also Known as
SUPREME,

Appellant.

Calendar Date: May 1, 2018

Before: Garry, P.J., McCarthy, Devine, Aaronson and Pritzker, JJ.

Michael P. Graven, Owego, for appellant, and appellant
pro se.

Stephen K. Cornwell Jr., District Attorney, Binghamton
(Stephen Ferri of counsel), for respondent.

Pritzker, J.

Appeal from a judgment of the County Court of Broome County
(Cawley Jr., J.), rendered March 9, 2015, convicting defendant
upon his plea of guilty of the crime of robbery in the third
degree.

Defendant pleaded guilty to a single-count indictment
charging him with robbery in the third degree. He was sentenced
as a second felony offender, in accordance with the plea
agreement, to a prison term of 2 to 4 years. Defendant appeals.

Defendant's challenges to the sufficiency and voluntariness
of the plea are unpreserved for our review in the absence of an

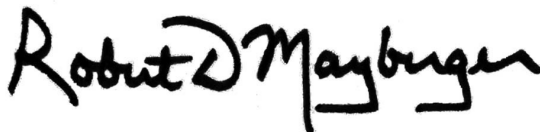
appropriate postallocution motion (see People v Lopez, 71 NY2d 662, 665-666 [1988]; People v Bailey, 158 AD3d 948, 948 [2018]). Further, the narrow exception to the preservation requirement is inapplicable as the record fails to reflect any statement during the plea colloquy that negated an element of the offense or otherwise called into question the voluntariness of the plea so as to trigger further inquiry by County Court (see People v Depugh, 158 AD3d 945, 945-946 [2018]). Contrary to defendant's contention, "it was not necessary for [him] to engage in a factual recitation of the elements of the crime and . . . his affirmative responses to the court's questions were sufficient to establish his guilt" (People v Griffith, 136 AD3d 1114, 1115 [2016], lv denied 28 NY3d 1184 [2017]).

We find defendant's challenge to the severity of the sentence to be without merit. The agreed-upon sentence was not harsh or excessive inasmuch as it was the statutory minimum prison term for a second felony offender convicted of a class D felony (see Penal Law § 70.06 [2], [3] [d]; People v Horton, 140 AD3d 1525, 1525 [2016]). Defendant's remaining contentions raised in his pro se brief have been reviewed and are without merit.

Garry, P.J., McCarthy, Devine and Aarons, 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