

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

Decided and Entered: January 25, 2018

108569

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

WAYNE J. GAUSE,

Appellant.

Calendar Date: December 13, 2017

Before: Garry, P.J., Egan Jr., Devine, Aarons and Rumsey, JJ.

Adam H. Van Buskirk, Chateaugay, for appellant.

Robert M. Carney, District Attorney, Schenectady (Tracey A. Brunecz of counsel), for respondent.

Appeal from a judgment of the County Court of Schenectady County (Murphy, J.), rendered March 2, 2015, convicting defendant upon his plea of guilty of the crime of attempted criminal possession of a controlled substance in the third degree.

Defendant waived indictment and agreed to be prosecuted pursuant to a superior court information charging him with one count of attempted criminal possession of a controlled substance in the third degree. A plea agreement was reached, pursuant to the terms of which defendant agreed to plead guilty to the superior court information with the understanding that he would be sentenced to a prison term of four years followed by a period of postrelease supervision ranging from 1½ to 3 years. The plea agreement, which also would satisfy additional charges, required defendant to waive his right to appeal. Defendant thereafter pleaded guilty to the charged crime and was sentenced to a prison

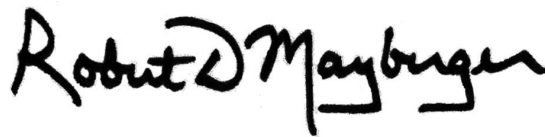
term of four years followed by two years of postrelease supervision. Defendant now appeals.

Upon appeal, defendant argues only that the sentence imposed is harsh and excessive. In light of defendant's unchallenged waiver of the right to appeal, however, we are precluded from reviewing this issue (see People v Fairweather, 147 AD3d 1153, 1154 [2017], lv denied 29 NY3d 1031 [2017]; People v Perkins, 140 AD3d 1401, 1403 [2016], lv denied 28 NY3d 1126 [2016]; People v Smalls, 128 AD3d 1281, 1282 [2015], lv denied 27 NY3d 1006 [2016]). Accordingly, the judgment of conviction is affirmed.

Garry, P.J., Egan Jr., Devine, Aarons and Rumsey, 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