

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

Decided and Entered: April 12, 2018

108570

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MICHAEL HART II,

Appellant.

Calendar Date: March 2, 2018

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

Lisa A. Burgess, Indian Lake, for appellant.

Craig P. Carriero, District Attorney, Malone (Jennifer M.
Hollis of counsel), for respondent.

Appeal from a judgment of the County Court of Franklin
County (Main Jr., J.), rendered May 3, 2016, convicting defendant
upon his plea of guilty of the crime of grand larceny in the
fourth degree.

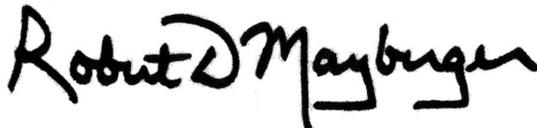
Defendant pleaded guilty to a single-count indictment
charging him with grand larceny in the fourth degree stemming
from his participation in the theft of electronics equipment from
a department store. He orally waived his right to appeal as part
of the plea agreement. He was thereafter sentenced, in
accordance with the terms of the plea agreement, to 1 to 3 years
in prison. Defendant now appeals, challenging the severity of
the sentence.

Initially, defendant is not precluded by his waiver of the right to appeal from raising this claim inasmuch as we find the appeal waiver to be invalid. Significantly, County Court did not advise defendant of the separate and distinct nature of the waiver or question him to ascertain that he understood its ramifications (see People v Thompson, 157 AD3d 1141, 1141 [2018]; People v Farrell, 156 AD3d 1062, 1062-1063 [2017], lv denied 30 NY3d 1115 [2018]). Notwithstanding the invalidity of the appeal waiver, we do not find that the sentence is either harsh or excessive. Defendant's criminal history discloses a number of prior convictions and probation violations. In addition, defendant consented to the sentence as part of the plea agreement and could have received a longer prison term if convicted after trial. In view of the foregoing, we find no extraordinary circumstances or any abuse of discretion warranting a reduction of the sentence in the interest of justice (see People v Ero, 139 AD3d 1248, 1250 [2016], lv denied 28 NY3d 929 [2016]; People v Lowe, 53 AD3d 982, 983 [2008]).

McCarthy, J.P., Egan Jr., Lynch, Mulvey 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