

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

Decided and Entered: March 15, 2018

108619

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

MEMORANDUM AND ORDER

v

STEVEN M. JOHNSON,

Appellant.

Calendar Date: January 23, 2018

Before: McCarthy, J.P., Lynch, Devine, Clark and Aarons, JJ.

G. Scott Walling, Slingerlands, for appellant.

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

Appeal from a judgment of the County Court of Washington County (McKeighan, J.), rendered April 29, 2016, which revoked defendant's probation and imposed a sentence of imprisonment.

In December 2015, defendant was convicted of attempted criminal possession of a controlled substance in the third degree and sentenced to five years of probation. After defendant's probation supervision was transferred from Albany County to Washington County in March 2016, defendant was charged with violating various terms and conditions of his probation, including possessing and using illegal drugs in his home. Thereafter, an agreement was reached whereby defendant would admit to the violations and waive his right to appeal in exchange for a prison term of six years followed by two years of postrelease supervision. Following defendant's admissions,

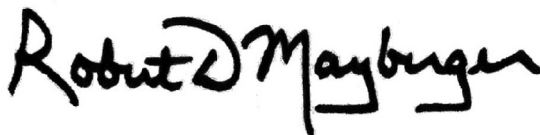
County Court sentenced defendant as a second felony offender to the agreed-upon prison term. Defendant now appeals.

The People concede, and we agree, that defendant's waiver of the right to appeal is invalid and, therefore, his challenge to the severity of the sentence imposed is not precluded (see People v Georges, 151 AD3d 1402, 1403 [2017]). That said, upon reviewing the record as a whole, and taking into consideration, among other things, defendant's lengthy criminal history and the advantageous resolution reached in this matter relative to his sentencing exposure, we find no extraordinary circumstances or any abuse of discretion that would warrant modification of the agreed-upon sentence imposed (see People v Georges, 151 AD3d at 1403; People v Kerwin, 117 AD3d 1097, 1098 [2014]).

McCarthy, J.P., Lynch, Devine, Clark 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