

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

Decided and Entered: December 6, 2018

109046

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

DEVON BALLARD,

Appellant.

Calendar Date: October 26, 2018

Before: Garry, P.J., Lynch, Devine, Mulvey and Aarons, JJ.

Kelly M. Monroe, Albany, for appellant.

Robert M. Carney, District Attorney, Schenectady (Peter H. Willis of counsel), for respondent.

Appeal from a judgment of the County Court of Schenectady County (Sypniewski, J.), rendered June 9, 2016, convicting defendant upon his plea of guilty of the crime of burglary in the second degree.

Defendant pleaded guilty to burglary in the second degree in full satisfaction of an eight-count indictment and waived the right to appeal. County Court thereafter sentenced him, as a second violent felony offender, to 10 years in prison, to be followed by five years of postrelease supervision. Defendant appeals, and we affirm.

We reject defendant's contention that he was illegally sentenced as a second violent felony offender because County

Court failed to comply with the provisions of CPL 400.21 (3). Inasmuch as the record reflects that defendant received adequate notice of and an opportunity to controvert the allegations made in the predicate felony statement, we find substantial compliance with CPL 400.21 (3) (see People v Wood, 108 AD3d 932, 933 [2013]; People v Ellis, 53 AD3d 776, 777 [2008]). To the extent that defendant claims that his sentence is harsh and excessive, our review of this claim is precluded by his unchallenged waiver of the right to appeal (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Gause, 157 AD3d 1167, 1168 [2018], lv denied 31 NY3d 983 [2018]).

Garry, P.J., Lynch, Devine, Mulvey 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