

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

Decided and Entered: January 31, 2019

109178

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

KENNETH J. RICKENBACKER,
Appellant.

Calendar Date: January 4, 2019

Before: Egan Jr., J.P., Lynch, Clark, Aarons and Rumsey, JJ.

Jane M. Bloom, Monticello, for appellant.

James R. Farrell, District Attorney, Monticello (Kristin L. Hackett of counsel), for respondent.

Appeal from a judgment of the County Court of Sullivan County (Schick, J.), rendered November 28, 2016, convicting defendant upon his plea of guilty of the crime of criminal possession of a weapon in the second degree.

In satisfaction of a six-count indictment and with the understanding that he would be sentenced to between seven and nine years in prison, defendant pleaded guilty to criminal possession of a weapon in the second degree and waived his right to appeal. Defendant, who had been released to probation supervision pending sentencing, was thereafter rearrested for seven new offenses, which he admitted was a violation of the Parker admonishment provided to him by County Court. However, notwithstanding the option to impose an enhanced sentence of up

to 15 years (see Penal Law § 70.06 [6] [b]), County Court sentenced defendant, as a second felony offender, within the range of the contemplated plea agreement, namely, to a prison term of nine years, to be followed by five years of postrelease supervision. Defendant appeals, and we affirm.

Defendant's sole contention is that the sentence imposed was harsh and excessive in light of, among other things, his history of substance abuse and dependence. This claim, however, is foreclosed by defendant's unchallenged appeal waiver (see People v Gorman, 165 AD3d 1349, 1349 [2018], lv denied ___ NY3d ___ [Dec. 27, 2018]; People v Morris, 161 AD3d 1219, 1220 [2018]; People v Wands, 160 AD3d 1214, 1215 [2018], lv denied 31 NY3d 1122 [2018]; People v St. Mary, 157 AD3d 1168, 1169 [2018], lv denied 31 NY3d 986 [2018]).

Egan Jr., J.P., Lynch, Clark, 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