

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

Decided and Entered: April 16, 2020

109099

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ROBERT CAROTA,

Appellant.

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Calendar Date: February 18, 2020

Before: Egan Jr., J.P., Lynch, Mulvey, Devine and  
Colangelo. JJ.

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Lisa A. Burgess, Indian Lake, for appellant.

J. Anthony Jordan, District Attorney, Fort Edward (Taylor  
Fitzsimmons of counsel), for respondent.

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Colangelo, J.

Appeal from a judgment of the County Court of Washington  
County (McKeighan, J.), rendered November 18, 2016, convicting  
defendant upon his plea of guilty of the crime of criminal  
contempt in the first degree.

In December 2015, defendant was charged by indictment with  
criminal contempt in the first degree and two Environmental  
Conservation Law violations. The predicate conviction for his  
criminal contempt charge was an October 2015 conviction of  
criminal contempt in the second degree rendered in Kingsbury  
Town Court. Defendant did not take a direct appeal from that

conviction.<sup>1</sup> While the subject indictment was pending, defendant filed a CPL 440.10 motion to vacate in Town Court with respect to the October 2015 predicate conviction, which the Town Court denied with prejudice. Thereafter, defendant accepted a negotiated plea agreement, the terms of which provided that defendant would plead guilty to criminal contempt in the first degree in satisfaction of the subject indictment and waive his right to appeal. Under that agreement, if defendant were successful on his appeal from the denial of his CPL article 440 motion to vacate the predicate conviction, he would be permitted to withdraw his guilty plea to the indictment, plead guilty to criminal contempt in the second degree and pay civil penalties for the environmental violations.

Pursuant to the agreement, defendant pleaded guilty to criminal contempt in the first degree, admitted the predicate conviction for purposes of his guilty plea and waived his right to appeal. County Court delayed sentencing on the indictment pending resolution of defendant's appeal from the denial of his CPL article 440 motion. Ultimately, County Court affirmed Town Court's denial of defendant's CPL 440.10 motion to vacate the predicate conviction. Defendant was then sentenced on the subject indictment, as a second felony offender, to the agreed-upon prison term of 1½ to 3 years. Defendant appeals.

On appeal, defendant argues that this Court should vacate or reduce his conviction of criminal contempt in the first degree premised upon his claim that the October 2015 predicate conviction is invalid. Essentially, defendant is seeking appellate review in this Court of the October 2015 predicate judgment of conviction rendered in Town Court. Irrespective of the validity of the challenged appeal waiver, we note that defendant did not file a notice of appeal from the predicate conviction in this Court (see CPL 460.10 [1] [a]; People v Moore, 152 AD3d 1088, 1088 [2017]). Even if he had, this Court lacks jurisdiction to review the predicate judgment of conviction (see People v Gogg, 285 AD2d 842, 842 [2001]), as an appeal from a judgment of conviction of a local criminal court

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<sup>1</sup> In November 2016, County Court denied defendant's motion for an extension of time to file a late notice of appeal.

lies not with the Appellate Division, but with County Court (see CPL 450.60 [3]), and any further appeal from a County Court appellate order would have been to the Court of Appeals (see CPL 450.90 [1]).

Egan Jr., J.P., Lynch, Mulvey and Devine, 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