

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

Decided and Entered: February 25, 2021

110955

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ROBERT B. MOSHER,

Appellant.

Calendar Date: January 12, 2021

Before: Garry, P.J., Egan Jr., Lynch, Aarons and Pritzker, JJ.

Rural Law Center of New York, Castleton (Kelly L. Egan of counsel), for appellant.

Karen A. Heggen, District Attorney, Ballston Spa (Gordon W. Eddy of counsel), for respondent.

Garry, P.J.

Appeal from a judgment of the County Court of Saratoga County (Murphy III, J.), rendered October 1, 2018, convicting defendant upon his plea of guilty of the crime of sexual abuse in the first degree.

Defendant waived indictment and agreed to be charged in a superior court information with sexual abuse in the first degree. In satisfaction thereof, defendant pleaded guilty and purportedly waived his right to appeal. In accordance with the plea agreement, defendant was sentenced to six years in prison,

to be followed by 10 years of postrelease supervision.
Defendant appeals.

Defendant asserts that the waiver of his right to appeal is invalid. We agree. A review of the record reflects that the written waiver of appeal signed by defendant contained language indicating that the waiver was an absolute bar to any appeal (see People v Gervasio, 190 AD3d 1190, 1191 [2020]; People v Lafond, 189 AD3d 1824, 1825 [2020]). County Court did not overcome this overbroad language by ensuring that defendant understood that some appellate review survived the waiver, and we thus find that defendant did not knowingly, intelligently or voluntarily waive the right to appeal (see People v Lafond, 189 AD3d at 1825; People v Anderson, 184 AD3d 1020, 1020-1021 [2020], lvs denied 35 NY3d 1064, 1068 [2020]). Accordingly, defendant's challenge to the severity of his sentence is not precluded. Upon consideration of the record, however, we find no extraordinary circumstances or abuse of discretion warranting a reduction of the agreed-upon sentence in the interest of justice (see People v Deming, 190 AD3d 1193, 1194 [2020]; People v Burnell, 183 AD3d 931, 932 [2020], lv denied 35 NY3d 1043 [2020]).

Defendant further argues that his plea was not knowing, intelligent and voluntary because County Court failed to fully advise him of the constitutional rights that he was waiving by pleading guilty. This contention has not been preserved for our review, as the record does not reflect that defendant made an appropriate postallocution motion (see People v Conceicao, 26 NY3d 375, 382 [2015]; People v Cruz, 186 AD3d 932, 933 [2020], lv denied 35 NY3d 1112 [2020]), or that he made any statements during the plea allocution that cast doubt on his guilt or otherwise called into question the voluntariness of his plea so as to trigger the narrow exception to the preservation requirement (see People v Lopez, 71 NY2d 662, 666 [1988]; People v Haenelt, 161 AD3d 1489, 1490 [2018], lv denied 31 NY3d 1148 [2018]). Upon review of the record, we decline to take corrective action in the interest of justice (see People v Howard, 190 AD3d 1108, ___ 2021 NY Slip Op 00210, *2 [2021];

People v Cruz, 186 AD3d at 933; compare People v Demkovich, 168 AD3d 1221, 1221 [2019]).

Egan Jr., Lynch, Aarons 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