

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

Decided and Entered: April 19, 2012

103990

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

JOSEPH E. GERTZBERG,

Appellant.

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Calendar Date: February 21, 2012

Before: Rose, J.P., Lahtinen, Stein, McCarthy and Garry, JJ.

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Sandra M. Colatosti, Albany, for appellant.

James Sacket, District Attorney, Schoharie (Michael L. Breen of counsel), for respondent.

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Appeal from a judgment of the County Court of Schoharie County (Bartlett III, J.), rendered January 5, 2011, which revoked defendant's probation and imposed a sentence of imprisonment.

Following defendant's plea of guilty to the crime of driving while intoxicated, he was sentenced to five years of probation. Thereafter, three violation of probation petitions were filed against defendant. In July 2010, among other things, he was sentenced in Otsego County Court to a prison term of 1 to 3 years upon his conviction of the crime of felony driving while intoxicated. Subsequently, defendant pleaded guilty to violating terms of his probation and waived his right to appeal, both orally and in writing. Defendant's probation was revoked and he was sentenced, in accordance with the plea agreement, to 1½ to 4 years, said sentence to run consecutively to the Otsego County

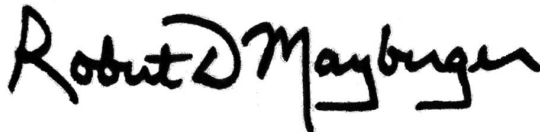
conviction. Defendant now appeals.

We affirm. Defendant's sole argument on appeal is that his sentence is harsh and excessive. Nonetheless, he is precluded from raising this claim by reason of his knowing, voluntary and intelligent waiver of the right to appeal (see People v Jones, 83 AD3d 1289, 1290 [2011], lv denied 17 NY3d 860 [2011]; People v Joseph, 69 AD3d 1056, 1056-1057 [2010]).

Rose, J.P., Lahtinen, Stein, McCarthy and Garry, 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