

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

Decided and Entered: March 30, 2017

107538

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ROGER W. CALDWELL,

Appellant.

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Calendar Date: February 15, 2017

Before: McCarthy, J.P., Garry, Rose, Mulvey and Aarons, JJ.

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Susan Patnode, Rural Law Center of New York, Castleton  
(George J. Hoffman Jr. of counsel), for appellant.

Kathleen B. Hogan, District Attorney, Lake George (Emilee  
B. Davenport of counsel), for respondent.

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Rose, J.

Appeal from a judgment of the County Court of Warren County  
(Hall Jr., J.), rendered April 1, 2015, convicting defendant upon  
his plea of guilty of the crime of burglary in the third degree.

Defendant waived indictment and was charged in a superior  
court information with burglary in the third degree. He  
thereafter pleaded guilty as charged and waived his right to  
appeal. County Court sentenced him, as a second felony offender,  
to a prison term of 3½ to 7 years. Defendant now appeals.

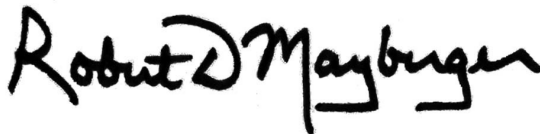
We affirm. Contrary to defendant's contention, the record  
reflects that he validly waived the right to appeal. County  
Court distinguished this right from those rights automatically

forfeited by pleading guilty, and defendant affirmed his understanding thereof and agreed to waive the right to appeal. Additionally, defendant executed a written appeal waiver in open court after discussing the waiver with counsel. In our view, defendant knowingly, intelligently and voluntarily waived the right to appeal his conviction and sentence (see People v Samuel, 143 AD3d 1012, 1012 [2016]; People v Neithardt, 127 AD3d 1502, 1502 [2015]). Given the valid waiver of the right to appeal, defendant's contention that his sentence is harsh and excessive is precluded (see People v Rhodes, 143 AD3d 1011, 1012 [2016]; People v Mann, 140 AD3d 1532, 1533 [2016]).

McCarthy, J.P., Garry, 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