

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

Decided and Entered: May 25, 2017

107797

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

JOHN R. HESS,

Appellant.

Calendar Date: May 5, 2017

Before: McCarthy, J.P., Egan Jr., Lynch, Devine and Clark, JJ.

Susan Patnode, Rural Law Center of New York, Castleton
(Cynthia Feathers of counsel), for appellant.

Mary E. Rain, District Attorney, Canton (Matthew L. Peabody
of counsel), for respondent.

Devine, J.

Appeal from a judgment of the County Court of St. Lawrence
County (Richards, J.), rendered May 18, 2015, convicting
defendant upon his plea of guilty of the crime of driving while
intoxicated.

Defendant pleaded guilty to a superior court information
charging him with driving while intoxicated and waived his right
to appeal. He was sentenced, in accordance with the plea
agreement, to five years of probation. Defendant appeals.

We are unpersuaded by defendant's contention that the
waiver of the right to appeal is invalid. The record reflects
that County Court adequately explained that the waiver of the

right to appeal was separate and distinct from the rights forfeited by the guilty plea and defendant acknowledged that he understood the nature of the appeal waiver. In addition, defendant executed a detailed written waiver in open court after discussing its consequences with defense counsel. In view of the foregoing, defendant knowingly, voluntarily and intelligently waived his right to appeal his conviction and sentence (see People v Morgan, 142 AD3d 1253, 1253 [2016]; People v Simon, 140 AD3d 1533, 1534 [2016]). As such, the valid appeal waiver precludes defendant's challenge to the severity of the sentence (see People v White, 145 AD3d 1324, 1325 [2016]).

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