

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

Decided and Entered: March 30, 2017

107995

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ROBERT A. BARTLETT JR.,
Appellant.

Calendar Date: February 16, 2017

Before: Peters, P.J., Lynch, Rose, Devine and Mulvey, JJ.

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

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

Peters, P.J.

Appeal from a judgment of the County Court of St. Lawrence
County (Richards, J.), rendered September 28, 2015, convicting
defendant upon his plea of guilty of the crimes of welfare fraud
in the third degree and offering a false instrument for filing in
the first degree (three counts).

Defendant was charged in an indictment with welfare fraud
in the third degree and offering a false instrument for filing in
the first degree (three counts). He thereafter pleaded guilty as
charged and his plea included the waiver of the right to appeal.
County Court sentenced him to the agreed-upon aggregate prison
term of $2\frac{1}{3}$ to 7 years, and defendant now appeals.

We affirm. We reject defendant's claim that, because County Court did not take into consideration his limited education, his waiver of the right to appeal was not knowing, intelligent and voluntary. Our review of the record reveals that County Court explained the trial-related rights that would be forfeited by defendant's guilty plea and the consequences thereof. The court separately explained the right to appeal and its ramifications, distinguished the right from the other rights that defendant was forfeiting, answered defendant's questions regarding the waiver, provided him with time to confer with counsel and ascertained that he was voluntarily waiving the right to appeal. Defendant thereafter signed a written waiver in open court, after affirming to the court that counsel had read it to him and that he understood its meaning. In light of this, we find that defendant validly waived the right to appeal his conviction and sentence (see People v Sanders, 25 NY3d 337, 340-341 [2016]; People v Lopez, 6 NY3d 248, 256 [2006]). Defendant's valid appeal waiver precludes his contention that his sentence is harsh and excessive (see People v Mann, 140 AD3d 1532, 1533 [2016]; People v Scott, 139 AD3d 1266, 1266 [2016], lv denied 27 NY3d 1155 [2016]).

Defendant's claim that his sentence is illegal survives his appeal waiver, but our review of the record confirms that County Court imposed a legal sentence. Although County Court referred to one of the counts of offering a false instrument for filing in the first degree as a class D felony at sentencing, it is apparent from a review of the uniform sentence and commitment form that the court simply misspoke and that defendant was properly sentenced upon his conviction for three counts of offering a false instrument for filing in the first degree, a class E felony, and one count of welfare fraud in the third degree, a class D felony (see People v Ressay, 141 AD3d 839, 843 n 2 [2016], lvs denied 28 NY3d 1030 [2016]). We have examined the remaining contentions advanced by defendant in his supplemental pro se brief and find them to be without merit.

Lynch, Rose, Devine and Mulvey, 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 style with a large, prominent "R" at the beginning and a long, sweeping underline at the end.

Robert D. Mayberger
Clerk of the Court