

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

Decided and Entered: December 7, 2017

108021

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

RYAN E. THOMASON,

Appellant.

Calendar Date: October 24, 2017

Before: Peters, P.J., Rose, Devine, Clark and Pritzker, JJ.

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

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

Appeal from a judgment of the County Court of St. Lawrence
County (Richards, J.), rendered October 21, 2015, which revoked
defendant's probation and imposed a term of imprisonment.

In satisfaction of a 12-count indictment, defendant pleaded
guilty to the reduced charge of attempted burglary in the second
degree and waived his right to appeal and, thereafter, was
sentenced, in January 2012, to five years of probation. In
January 2014, defendant was charged with violating various terms
of his probation, including using marihuana and alcohol.
Defendant admitted to violating the terms of his probation and
was afforded two resentencing options: (1) if he successfully
participated in a drug treatment program, he would continue
probation with the understanding that, if he was unsuccessful, he
would be sentenced to the maximum prison term of seven years; (2)

the imposition of a 2½-year prison term followed by two years of postrelease supervision. In accordance with defendant's preference for the first option, County Court adjourned resentencing in order for defendant to participate in a drug treatment program. Thereafter, defendant, among other things, was unsuccessfully discharged from the drug treatment program and failed a jail drug test. As a result, in October 2015, County Court revoked defendant's probation and resentenced him to a prison term of 6½ years followed by three years of postrelease supervision. Defendant appeals.

We are unpersuaded by defendant's contention that the negotiated sentence imposed was harsh and excessive. Defendant was provided with a sentencing option and chose participation in a drug treatment program with a sentence of probation upon successful completion. He was repeatedly informed that his failure to successfully complete the drug treatment program would result in a prison term of seven years followed by three years of postrelease supervision. Notwithstanding defendant's lack of criminal history and his substance abuse issues, we do not find that County Court abused its discretion in imposing a prison term of 6½ years – a sentence that was less than that contemplated by the negotiated agreement and below the maximum permissible sentence for a class D violent felony (see Penal Law § 70.02 [3] [c]) – nor do any extraordinary circumstances exist warranting a reduction of the sentence in the interest of justice (see generally People v Cotter, 142 AD3d 1253, 1254 [2016]; People v Cruz, 53 AD3d 986, 986 [2008]; People v Lowe, 53 AD3d 982, 983 [2008]).

Peters, P.J., Rose, Devine, Clark 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