

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

Decided and Entered: November 30, 2017

108178

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ALAN G. BIGWARFE,

Appellant.

Calendar Date: October 12, 2017

Before: McCarthy, J.P., Egan Jr., Lynch, Rose and Rumsey, JJ.

Lisa A. Burgess, Indian Lake, for appellant.

Craig P. Carriero, District Attorney, Malone (Jennifer M. Hollis of counsel), for respondent.

McCarthy, J.P.

Appeal from a judgment of the County Court of Franklin County (Main Jr., J.), rendered January 7, 2016, convicting defendant upon his plea of guilty of the crime of criminal mischief in the second degree.

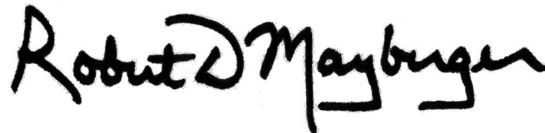
In satisfaction of a six-count indictment, defendant pleaded guilty to criminal mischief in the second degree and waived his right to appeal. In accordance with the plea agreement, County Court sentenced him, as a second felony offender, to a prison term of 2½ to 5 years. Defendant appeals.

Our review of the plea colloquy establishes that the waiver of appeal was knowing, voluntary and intelligent (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Miller, 137 AD3d 1485, 1485 [2016]). Defendant's valid waiver of the right to appeal precludes us from reviewing his contention that his sentence is harsh and excessive (see People v Gasparro, 139 AD3d 1247, 1248 [2016], lv denied 28 NY3d 929 [2016]; People v Butler, 134 AD3d 1349, 1350 [2015], lv denied 27 NY3d 963 [2016]).

Egan Jr., Lynch, Rose and Rumsey, 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