

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

Decided and Entered: August 3, 2017

108445

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

FRANK DONER,

Appellant.

Calendar Date: June 12, 2017

Before: Peters, P.J., McCarthy, Rose and Devine, JJ.

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

Jason M. Carusone, Acting District Attorney, Lake George
(Emilee B. Davenport of counsel), for respondent.

Appeal from a judgment of the County Court of Warren County
(Hall, J.), rendered April 13, 2016, convicting defendant upon
his plea of guilty of the crimes of burglary in the second degree
and endangering the welfare of a child.

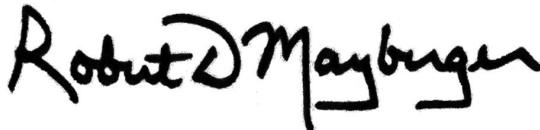
In satisfaction of an eight-count indictment, defendant
entered an Alford plea of guilty to burglary in the second degree
and endangering the welfare of a child, and waived his right to
appeal. He was sentenced as a second felony offender in
accordance with the plea agreement to a prison term of six years
followed by five years of postrelease supervision for the
burglary conviction and a concurrent jail term of one year on the
conviction for endangering the welfare of a child. 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 distinguished the right to appeal as separate from the rights forfeited by the guilty plea. In addition, defendant executed a detailed appeal waiver in open court after conferring with counsel and acknowledged his understanding of the appeal waiver. As such, we find that defendant knowingly, voluntarily and intelligently waived his right to appeal (see People v McCall, 146 AD3d 1156, 1157 [2017], lvs denied 29 NY3d 1033, 1034 [2017]; People v Woods, 141 AD3d 954, 955 [2016], lv denied 28 NY3d 1076 [2016]). Accordingly, the valid appeal waiver precludes defendant's challenge to the sentence as harsh and excessive (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Oddy, 144 AD3d 1322, 1323 [2016]).

Peters, P.J., McCarthy, Rose and Devine, 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