

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

Decided and Entered: May 31, 2018

107992

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

TREVOR J. SISTO,

Appellant.

Calendar Date: April 25, 2018

Before: Garry, P.J., Lynch, Clark, Aarons and Rumsey, JJ.

Thomas F. Garner, Middleburgh, for appellant.

Kristy L. Sprague, District Attorney, Elizabethtown (James E. Martineau Jr. of counsel), for respondent.

Aarons, J.

Appeal from a judgment of the County Court of Essex County (Meyer, J.), rendered March 5, 2015, convicting defendant upon his plea of guilty of the crimes of assault in the first degree (three counts), attempted assault in the first degree, reckless driving (two counts) and reckless endangerment in the second degree and the violation of leaving the scene of an incident without reporting (two counts).

In satisfaction of a 60-count indictment, defendant pleaded guilty to attempted assault in the first degree and three counts of assault in the first degree, as well as various misdemeanors and traffic violations, and waived his right to appeal. He was sentenced, in accordance with the terms of the plea agreement, to an aggregate prison term of 35 years followed by a period of

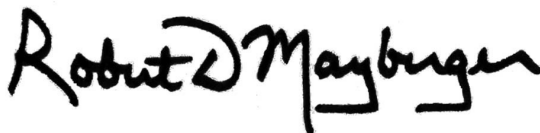
postrelease supervision. Defendant appeals.

Defendant's challenges to the sufficiency and voluntariness of the plea are unpreserved for our review as the record does not reflect that he made an appropriate postallocation motion (see People v Leach, 26 NY3d 1154, 1154 [2016]; People v Shillabeer, 154 AD3d 1017, 1018 [2017]; People v Adams, 153 AD3d 1449, 1450 [2017]; People v Butler, 134 AD3d 1349, 1350 [2015], lvs denied 27 NY3d 962, 963 [2017]). Further, a review of the plea colloquy fails to establish any basis to warrant the application of the narrow exception to the preservation requirement (see People v Louree, 8 NY3d 541, 545 [2007]; People v Wallace, 150 AD3d 1551, 1552 [2017]; People v Butler, 134 AD3d at 1350). To the extent that defendant challenges the severity of the agreed-upon sentence, it is precluded by the unchallenged waiver of the right to appeal (see People v Lopez, 6 NY3d 248, 256 [2006]; People v St. Mary, 157 AD3d 1168, 1169 [2018], lv denied 31 NY3d 986 [2018]).

Garry, P.J., Lynch, Clark 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