

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

Decided and Entered: November 15, 2018

108572

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

JAMES LETOHIC,

Appellant.

Calendar Date: October 9, 2018

Before: McCarthy, J.P., Devine, Mulvey, Rumsey and
Pritzker, JJ.

Jack H. Weiner, New York City, for appellant.

James R. Farrell, District Attorney, Monticello (Kristin
L. Hackett of counsel), for respondent.

Mulvey, J.

Appeal from a judgment of the County Court of Sullivan
County (McGuire, J.), rendered January 20, 2016, convicting
defendant upon his plea of guilty of the crimes of robbery in
the first degree and burglary in the second degree.

Defendant pleaded guilty to robbery in the first degree
and burglary in the second degree in full satisfaction of a six-
count indictment and waived the right to appeal. County Court
thereafter sentenced defendant to an aggregate prison term of
11½ years, to be followed by five years of postrelease
supervision. Defendant now appeals.

We affirm. Defendant's challenge to the factual sufficiency of his plea allocation is precluded by his valid and unchallenged appeal waiver (see People v Haverly, 161 AD3d 1483, 1484 [2018], lv denied 32 NY3d 938 [2018]; People v Robinson, 155 AD3d 1252, 1253 [2017], lv denied 30 NY3d 1119 [2018]). Defendant's claim of ineffective assistance of counsel – insofar as it implicates the voluntariness of his plea – survives his appeal waiver but is unpreserved for our review, as the record does not reflect that he made an appropriate postallocation motion (see People v Duggins, 161 AD3d 1445, 1446 [2018], lv denied 32 NY3d 937 [2018]; People v Park, 159 AD3d 1132, 1134 [2018], lv denied 31 NY3d 1085 [2018]). Moreover, defendant did not make any statements during the plea colloquy that would trigger the narrow exception to the preservation rule (see People v Thomas, 153 AD3d 1445, 1446 [2017], lv denied 30 NY3d 1064 [2017]; People v Lewis, 143 AD3d 1183, 1185 [2016]).

McCarthy, J.P., Devine, Rumsey and Pritzker, JJ., concur.

ORDERED that the judgment is affirmed.

ENTER:



Robert D. Mayberger
Clerk of the Court