

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

Decided and Entered: April 26, 2018

108781

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

RUBEN J. QUINONES,

Appellant.

Calendar Date: March 2, 2018

Before: Garry, P.J., McCarthy, Mulvey, Aarons and Rumsey, JJ.

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

Gary M. Pasqua, District Attorney, Canton (Matthew J. Peabody of counsel), for respondent.

Appeal from a judgment of the County Court of St. Lawrence County (Richey, J.), rendered August 18, 2016, convicting defendant upon his plea of guilty of the crimes of grand larceny in the fourth degree, criminal trespass in the second degree and identity theft in the third degree.

Defendant pleaded guilty to grand larceny in the fourth degree, criminal trespass in the second degree and identity theft in the third degree as charged in an indictment and waived his right to appeal. Pursuant to the terms of the plea agreement, defendant was placed on interim probation and, if successful, would be permitted to withdraw his plea and enter a plea to a misdemeanor with a period of probation to be imposed at sentencing. Thereafter, defendant failed to comply with the terms of the interim probation and County Court sentenced him to

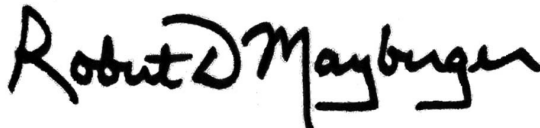
an aggregate prison term of 1 to 3 years. Defendant appeals.

We are unpersuaded by defendant's contention that the waiver of the right to appeal is invalid (see People v Sanders, 25 NY3d 337, 340-342 [2015]; People v Lopez, 6 NY3d 248, 256 [2006]). The record reflects that County Court (Richards, J.) informed defendant of the separate and distinct nature of the right to appeal and that defendant acknowledged that he understood and was voluntarily relinquishing those rights. Defendant then executed in open court a written waiver after reading and discussing it with counsel, and confirmed that he understood it. In view of the foregoing, the record demonstrates that defendant knowingly, voluntarily and intelligently waived his right to appeal (see People v Weir, 155 AD3d 1190, 1191 [2017]; People v Tulip, 150 AD3d 1564, 1565 [2017]). As such, defendant's challenge to the severity of the sentence is precluded (see People v Upshur, 150 AD3d 1552, 1553 [2017]; People v Fifield, 149 AD3d 1420, 1421 [2017]).

Garry, P.J., McCarthy, Mulvey, Aarons 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