

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

Decided and Entered: April 18, 2019

109307B

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

GREGORY P. TIETJE,

Appellant.

Calendar Date: March 15, 2019

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

Dennis J. Lamb, Troy, for appellant, and appellant
pro se.

D. Holley Carnright, District Attorney, Kingston (Joan
Gudesblatt Lamb of counsel), for respondent.

Appeal from a judgment of the County Court of Ulster
County (Williams, J.), rendered February 24, 2017, convicting
defendant upon his plea of guilty of the crime of driving while
intoxicated.

In full satisfaction of a four-count indictment, defendant
agreed to plead guilty to one count of driving while intoxicated
and executed a waiver of the right to appeal. Thereafter,
County Court sentenced defendant, in accordance with the terms
of the plea agreement, to a prison term of 2 to 6 years, with
the sentence to run consecutively to any previously imposed
sentences. Defendant appealed, and this Court rejected his
counsel's Anders brief, withheld decision and assigned new

counsel to represent defendant on appeal (166 AD3d 1079, 1079-1080 [2018]). We now affirm.

Initially, defendant contends that his appeal waiver is invalid and does not preclude his challenge to the severity of the sentence. We agree with defendant that County Court's question regarding whether defendant understood that he was giving up all of his appellate rights when pleading guilty was misleading because it implied "that the right to appeal is automatically extinguished upon entry of a guilty plea" (People v Moyett, 7 NY3d 892, 893 [2006]; see People v Billingslea, 6 NY3d 248, 257 [2006]; People v Odom, 164 AD3d 1475, 1475 [2018], lv denied 32 NY3d 1176 [2019]). Nevertheless, the court's plea colloquy, together with the detailed written waiver of the right to appeal that explained, among other things, the appellate process and defendant's right to appeal, adequately apprised defendant that the right to appeal is separate and distinct from the trial-related rights automatically forfeited upon a plea of guilty (see People v Ramos, 7 NY3d 737, 738 [2006]; People v Weinstock, 129 AD3d 1663, 1663 [2015], lv denied 26 NY3d 1012 [2015]; People v Williams, 49 AD3d 1281, 1282 [2008], lv denied 10 NY3d 940 [2008]). In addition, County Court confirmed that defense counsel had discussed the waiver of appeal with defendant and that defendant had no further questions regarding the written appeal waiver prior to signing it in open court (see People v Bradshaw, 18 NY3d 257, 264-265 [2011]; People v Williams, 167 AD3d 1084, 1085 [2018], lvs denied ___ NY3d ___ [Feb. 7, 2019]; People v McClain, 165 AD3d 1345, 1345-1346 [2018]; People v Jackson, 129 AD3d 1342, 1342 [2015]). Accordingly, defendant's argument that his sentence is harsh and excessive is precluded by his valid waiver of the right to appeal (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Freeman, 169 AD3d 1115, 1116 [2019]; People v Watkins, 166 AD3d 1239, 1240 [2018]).

Finally, defendant's contentions raised in his supplemental brief regarding the adequacy of the medical care that he has received while confined concern matters that are outside of the record before us and are more properly addressed through "the grievance process, a CPLR article 78 proceeding or

an action in the nature of mandamus" (Blake v State of New York, 145 AD3d 1336, 1337 [2016], lv denied 29 NY3d 908 [2017]).

Lynch, J.P., Clark, Aarons, Rumsey and Pritzker, 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