

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

Decided and Entered: March 14, 2019

109520

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

NATHAN HARRINGTON,

Appellant.

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Calendar Date: February 8, 2019

Before: Garry, P.J., Clark, Mulvey, Devine and Pritzker, JJ.

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Matthew A. Toporowksi, Albany, for appellant, and  
appellant pro se.

P. David Soares, District Attorney, Albany (Michael C.  
Wetmore of counsel), for respondent.

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Appeal from a judgment of the County Court of Albany  
County (Carter, J.), rendered May 4, 2017, which revoked  
defendant's probation and imposed a sentence of imprisonment.

In March 2016, defendant pleaded guilty to two counts of  
attempted sexual abuse in the first degree and was sentenced to  
two 10-year terms of probation, said terms to run concurrently.  
Defendant's probation was subject to various conditions,  
including that he refrain from using, possessing or viewing  
pornography. After a routine search of defendant's cell phone  
disclosed multiple pornographic images, defendant was charged  
with violating his probation. In March 2017, defendant admitted  
to violating his probation, and County Court thereafter revoked

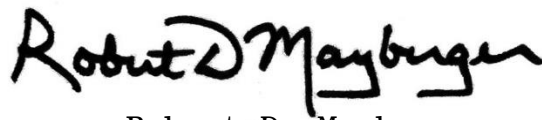
defendant's probation and sentenced him to concurrent prison terms of 2½ years followed by 10 years of postrelease supervision. Defendant now appeals.

We affirm. To the extent that defendant's brief may be read as challenging the voluntariness of his guilty plea to the probation violation, this argument is unpreserved for our review in the absence of an appropriate postallocution motion (see People v Shaw, 157 AD3d 1138, 1140 [2018]; People v Sumter, 157 AD3d 1125, 1125 [2018]; People v Peterson, 147 AD3d 1148, 1149 [2017]). Further, as defendant did not make any statements during the plea colloquy that were inconsistent with his guilt or otherwise called into question the voluntariness of his plea, the narrow exception to the preservation requirement was not triggered (see People v Sumter, 157 AD3d at 1126; People v Woodard, 139 AD3d 1238, 1238-1239 [2016], lv denied 28 NY3d 939 [2016]). Finally, we agree with defendant that the purported waiver of the right to appeal was invalid, thereby permitting him to challenge the severity of the sentence imposed. That said, given "defendant's inability to comply with the terms of his probation, we find no abuse of discretion or extraordinary circumstances warranting a modification of his sentence in the interest of justice" (People v Cook, 133 AD3d 1048, 1048 [2015] [internal quotation marks and citation omitted]).

Garry, P.J., Clark, Mulvey, Devine 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 style with a large, prominent "R" and "M".

Robert D. Mayberger  
Clerk of the Court