

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

Decided and Entered: April 11, 2019

109524

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

TOMASZ KUSMIREK,

Appellant.

Calendar Date: March 15, 2019

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

Michael C. Ross, Bloomingburg, for appellant.

James R. Farrell, District Attorney, Monticello (Brian P. Conaty of counsel), for respondent.

Appeal from a judgment of the County Court of Sullivan County (Schick, J.), rendered April 11, 2017, convicting defendant upon his plea of guilty of the crime of arson in the third degree.

After waiving indictment and agreeing to be prosecuted by a superior court information, defendant pleaded guilty to arson in the third degree and waived his right to appeal. Thereafter, County Court sentenced defendant, in accordance with the terms of the plea agreement, to a prison term of 3 to 9 years. Defendant appeals.

Defendant's sole contention on appeal is that the sentence is harsh and excessive given, among other things, his minimal

criminal history and history of serious mental illness. This issue, however, is precluded by the unchallenged appeal waiver (see People v Lopez, 6 NY3d 248, 256 [2006]; People v Steele, 168 AD3d 1276, 1276 [2019]; People v Allen, 166 AD3d 1210, 1211 [2018], lv denied ___ NY3d ___ [Feb. 27, 2019]; People v Blackburn, 164 AD3d 960, 962 [2018]).

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, slightly slanted style.

Robert D. Mayberger
Clerk of the Court