

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

Decided and Entered: June 20, 2019

109621

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MARK NUGENT,

Appellant.

Calendar Date: April 24, 2019

Before: Lynch, J.P., Mulvey, Devine, Aarons and Rumsey, JJ.

Theodore J. Stein, Woodstock, for appellant.

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

Devine, J.

Appeal from a judgment of the County Court of Ulster County (Williams, J.), rendered April 7, 2015, convicting defendant upon his plea of guilty of the crime of criminal possession of a controlled substance in the third degree.

In 2014, a drug task force obtained information that defendant, who was under probation supervision in Orange County, was residing and selling narcotics in Ulster County. A probation officer assigned to the drug task force consulted with his colleagues in Orange County, who requested that he conduct a home visit and verify that defendant was living in Ulster County. The probation officer and other task force members went

to the address and encountered defendant, who said that it was not his residence and attempted to shut the front door. Defendant pushed the probation officer after he stopped defendant from closing the door, at which point several task force members swarmed in to subdue defendant. Defendant then told the probation officer that there was a gun in the residence, and a warrantless search was conducted that found a shotgun and drugs.

Defendant was charged in an indictment with various offenses. Pursuant to the parties' stipulation, County Court then conducted a hearing to consider, among other things, whether to suppress the physical evidence recovered from the residence. Before County Court handed down its decision, defendant pleaded guilty to one count of criminal possession of a controlled substance in the third degree in full satisfaction of the indictment and another matter, and further waived his right to appeal. County Court agreed to sentence defendant to six years in prison to be followed by two years of postrelease supervision, but warned him that it could impose a prison sentence of up to nine years if he was charged with any new offenses before sentencing. Defendant was subsequently charged with a new offense and, following an Outley hearing, County Court found that he had violated the sentencing condition and sentenced him to eight years in prison to be followed by two years of postrelease supervision. Defendant appeals, and we now affirm.

Defendant's sole contention on appeal is that the physical evidence recovered during the warrantless search should have been suppressed, and the record contains an order from County Court denying that relief. The order was signed the same date as the guilty plea, however, and County Court stated that it would not commit to the plea agreement unless defendant pleaded guilty "before the [c]ourt issued its" decision. Defendant did so and, during the plea colloquy, acknowledged that the order had not been issued and that his guilty plea would foreclose his ability to "question what happened at those suppression hearings." Thus, "[b]y pleading guilty after the suppression hearing but before a decision was rendered . . . , defendant

forfeited his right to appellate review of all claims related to the . . . motion" (People v Rodriguez, 118 AD3d 1182, 1182-1183 [2014], lv denied 24 NY3d 964 [2014]; see People v Fernandez, 67 NY2d 686, 688 [1986]; People v Otto, 149 AD3d 1275, 1275 [2017]; People v Brabham, 112 AD3d 1066, 1067 [2013]).

Lynch, J.P., 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