

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

Decided and Entered: September 19, 2019

109981

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

DEWITT MILLER,

Appellant.

Calendar Date: August 30, 2019

Before: Garry, P.J., Egan Jr., Mulvey, Devine and Aarons, JJ.

Donnial K. Hinds, Albany, for appellant.

P. David Soares, District Attorney, Albany (Christopher D. Horn of counsel), for respondent.

Appeal from a judgment of the Supreme Court (Breslin, J.), rendered August 8, 2017 in Albany County, convicting defendant upon his plea of guilty of the crime of attempted robbery in the second degree.

Defendant waived indictment, pleaded guilty to a superior court information charging him with attempted robbery in the second degree and waived his right to appeal. Supreme Court sentenced him to 4½ years in prison, followed by three years of postrelease supervision. Defendant appeals.

We affirm. Defendant's sole contention on appeal is that the sentence imposed is harsh and excessive. Such claim is precluded, however, by defendant's unchallenged appeal waiver

(see People v Lopez, 6 NY3d 248, 255-256 [2006]; People v Chapman, 160 AD3d 1211, 1211 [2018]; People v Gause, 157 AD3d 1167, 1168 [2018], lv denied 31 NY3d 983 [2018]). Accordingly, the judgment of conviction is affirmed.

Garry, P.J., Egan Jr., Mulvey, Devine and Aarons, 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