

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

Decided and Entered: May 27, 2021

110462

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

NAKEEM HAYNES,

Appellant.

Calendar Date: April 27, 2021

Before: Garry, P.J., Egan Jr., Lynch and Colangelo, JJ.

Lisa A. Burgess, Indian Lake, for appellant.

Craig P. Carriero, District Attorney, Malone (Jennifer M. Hollis of counsel), for respondent.

Egan Jr., J.

Appeal from a judgment of the County Court of Franklin County (Champagne, J.), rendered May 11, 2018, convicting defendant upon his plea of guilty of the crime of attempted promoting prison contraband in the first degree.

Defendant pleaded guilty to the reduced charge of attempted promoting prison contraband in the first degree and agreed to waive his right to appeal. He was sentenced, as a second felony offender, to 1½ to 3 years in prison. Defendant appeals.

Defendant contends that the waiver of the right to appeal is invalid and that his plea was not knowing, voluntary and intelligent. Regardless of the validity of the appeal waiver, defendant's challenge to the voluntariness of the plea survives any such waiver (see People v Thomas, 190 AD3d 1157, 1159 [2021]; People v Payson, 189 AD3d 1820, 1822 [2020], lv denied 36 NY3d 1099 [2021]; People v Smith, 188 AD3d 1357, 1357 [2020]). Defendant's challenge to the voluntariness of the plea, however, is unpreserved as the record does not reflect that defendant made an appropriate postallocution motion, and a review of the plea colloquy does not demonstrate that the narrow exception to the preservation requirement is applicable (see People v Leach, 26 NY3d 1154, 1154 [2016]; People v Smith, 188 AD3d at 1357; People v Hummel-Parker, 171 AD3d 1397, 1398 [2019]; People v Peryea, 169 AD3d 1120, 1121 [2019], lv denied 33 NY3d 980 [2019]). As such, the judgment of conviction will not be disturbed.

Garry, P.J., Lynch and Colangelo, JJ., concur.

ORDERED that the judgment is affirmed.

ENTER:



Robert D. Mayberger
Clerk of the Court