

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

Decided and Entered: June 17, 2021

110662

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MICHAEL VITTENGL,

Appellant.

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Calendar Date: May 7, 2021

Before: Garry, P.J., Lynch, Clark, Aarons and Reynolds  
Fitzgerald, JJ.

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Rural Law Center of New York, Castleton (Kelly L. Egan of  
counsel), for appellant.

Jason M. Carusone, District Attorney, Lake George (Rebecca  
Nealon of counsel), for respondent.

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Appeal from a judgment of the County Court of Warren  
County (Hall Jr., J.), rendered October 17, 2018, which revoked  
defendant's probation and imposed a sentence of imprisonment.

In May 2018, defendant pleaded guilty to criminal  
possession of stolen property in the third degree and received a  
split sentence of six months in jail and five years of  
probation. Two months later, defendant was charged with  
violating three terms and conditions of his probation, including  
being arrested and charged with a felony. Pursuant to a  
negotiated disposition, defendant admitted to violating the  
terms and conditions of his probation and waived his right to

appeal. Thereafter County Court revoked defendant's probation and sentenced him to a prison term of 2 to 6 years. This appeal ensued.

The People have advised this Court – and our review of the records of the Department of Corrections and Community Supervision confirms – that defendant was discharged from prison and from parole supervision in January 2020. Accordingly, defendant's sole challenge upon appeal – that the sentence imposed was harsh and excessive – is moot (compare People v King, 178 AD3d 1126, 1127 [2019] and People v Parker, 156 AD3d 1059, 1060 [2017], with People v Guyett, 137 AD3d 1329, 1329 [2016] and People v Rivers, 130 AD3d 1092, 1092 n [2015]). Were we to conclude otherwise, we would find that defendant's waiver of the right to appeal was valid and, therefore, his challenge to the perceived severity of his sentence would be precluded (see People v Bayne, 175 AD3d 1722, 1723 [2019]).

Garry, P.J., Lynch, Clark, Aarons and Reynolds Fitzgerald, 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