

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

Decided and Entered: July 15, 2021

110696

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

TERRANCE BROOKS,

Appellant.

Calendar Date: June 17, 2021

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

Thomas R. Villecco, Albany, for appellant.

David J. Clegg, District Attorney, Kingston (Joan
Gudesblatt Lamb of counsel), for respondent.

Appeal from a judgment of the County Court of Ulster
County (Williams, J.), rendered December 12, 2017, convicting
defendant upon his plea of guilty of the crime of grand larceny
in the fourth degree.

Defendant waived indictment and agreed to be prosecuted
pursuant to a superior court information charging him with one
count of grand larceny in the fourth degree. Pursuant to a
negotiated agreement, defendant agreed to plead guilty to the
charged crime with the understanding that he would be sentenced
– as a second felony offender – to a prison term of 1½ to 3
years. The plea agreement, which also encompassed a pending
assault charge in another court, required defendant to waive his

right to appeal and to make restitution in the amount of \$2,000. Defendant pleaded guilty in conformity with the plea agreement, the agreed-upon sentence was imposed and, as outlined in the plea agreement, County Court ordered restitution in the amount of \$2,000 (exclusive of the applicable surcharge). This appeal ensued.

Defendant was informed at the outset – and prior to waiving his right to appeal – that restitution in the sum of \$2,000 was part of the negotiated plea agreement, and defendant neither requested a restitution hearing nor otherwise objected to the amount of restitution during the course of the sentencing proceeding. Accordingly, defendant's challenge to the amount of restitution ordered is both precluded by his uncontested appeal waiver (see People v Daniels, 193 AD3d 1179, 1180 [2021]; People v Perry, 168 AD3d 1287, 1288 [2019]; People v Knight, 164 AD3d 957, 958 [2018], lv denied 32 NY3d 1005 [2018]) and is unpreserved for our review (see People v Daniels, 193 AD3d at 1180; People v Ryan, 176 AD3d 1399, 1401-1402 [2019], lv denied 34 NY3d 1081 [2019]; People v Haggray, 164 AD3d 1522, 1526 [2018], lv denied 32 NY3d 1111 [2018]). Defendant's argument relative to the sufficiency of the People's proof in this regard is similarly unpreserved (see People v Villnave, 117 AD3d 1178, 1179 [2014]), and his attempt to circumvent the waiver/preservation doctrines by couching his argument as a challenge to the legality of the restitution ordered is unpersuasive. Accordingly, the judgment of conviction is affirmed.

Garry, P.J., Egan Jr., Clark, Pritzker and Colangelo, 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