

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

Decided and Entered: November 18, 2021

111532

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

LEE WOODS,

Appellant.

Calendar Date: October 14, 2021

Before: Garry, P.J., Egan Jr., Aarons, Reynolds Fitzgerald and
Colangelo, JJ.

Barrett D. Mack, Albany, for appellant.

J. Anthony Jordan, District Attorney, Fort Edward (Taylor
Fitzsimmons of counsel), for respondent.

Colangelo, J.

Appeal from a judgment of the County Court of Washington
County (McKeighan, J.), rendered March 1, 2019, convicting
defendant upon his plea of guilty of the crime of aggravated
harassment of an employee by an inmate.

Defendant, an incarcerated individual, was indicted on
three counts of aggravated harassment of an employee by an
inmate for allegedly throwing urine on correction officers on
two separate occasions. Defense counsel moved to suppress an
alleged voluntary statement made by defendant to one of the
correction facility employees involved in one of the incidents.

Prior to the commencement of that Huntley hearing, defense counsel negotiated a plea agreement whereby the People agreed that defendant would plead guilty to one count of the indictment and, in lieu of the suppression hearing, be sentenced to 1½ to 3 years in prison to run consecutively to the undischarged sentence he was currently serving. Thereafter, defendant pleaded guilty to aggravated harassment of an employee by an inmate and was sentenced, as a second felony offender, in accordance with the terms of the plea agreement. Defendant appeals.

Defendant contends that defense counsel was ineffective for not pursuing the Huntley hearing prior to defendant pleading guilty. Defendant's contention is unreserved for our review absent a motion to withdraw his plea or vacate the judgment of conviction (see People v Cassara, 88 AD3d 1069, 1069 [2011], lv denied 18 NY3d 956 [2012]; People v Stevenson, 58 AD3d 948, 949 [2009], lv denied 12 NY3d 860 [2009]). In any event, any challenge to defense counsel's motion practice was forfeited by defendant's guilty plea (see People v Coates, 167 AD3d 1161, 1161 [2018]; People v Gorman, 165 AD3d 1349, 1350 [2018], lv denied 32 NY3d 1125 [2018]). To the extent that defendant challenges the severity of the sentence imposed, we note that the agreed-upon sentence cannot be considered harsh and excessive because he received the minimum legally permissible sentence, as a second felony offender, for this class E felony offense (see Penal Law §§ 70.02 [3] [e]; [4] [b]; 240.32; see e.g. People v Terpening, 79 AD3d 1367, 1368 [2010], lv denied 16 NY3d 837 [2011]).

Garry, P.J., Egan Jr., 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 style with a large, prominent "R" and "M".

Robert D. Mayberger
Clerk of the Court