

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

Decided and Entered: March 11, 2021

112383

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

TAMIR D. TUNNELL,

Appellant.

Calendar Date: February 8, 2021

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

Danielle Neroni Reilly, Albany, for appellant.

P. David Soares, District Attorney, Albany (Jonathan P.
Catania of counsel), for respondent.

Egan Jr., J.P.

Appeal from a judgment of the County Court of Albany
County (Carter, J.), rendered July 30, 2019, which revoked
defendant's probation and imposed a sentence of imprisonment.

Defendant pleaded guilty to attempted criminal possession
of a weapon in the second degree and was sentenced as a youthful
offender to five years of probation. He was subsequently
charged with violating multiple conditions of his probation and
a declaration of delinquency was issued. Thereafter, County
Court conducted a hearing on the violation petition. At its
conclusion, the court determined that defendant had violated the

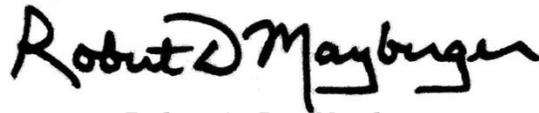
conditions of his probation requiring him to report to his probation officer, abide by a curfew, maintain employment and pay restitution. Consequently, the court revoked his probation and resentenced him to 1 to 3 years in prison on the underlying crime. Defendant appeals.

Initially, defendant contends that the People failed to establish that his failure to pay restitution was willful as County Court did not conduct a sufficient inquiry into his ability to pay (see People v Hakes, 168 AD3d 1214, 1215 [2019]). This claim, however, has not been preserved for our review as defendant did not raise it at the hearing or at the resentencing (see People v Bailey, 181 AD3d 1243, 1245 [2020]; People v Swick, 147 AD3d 1346, 1346 [2017], lv denied 29 NY3d 1001 [2017]). In any event, this was only one of many probation violations that defendant committed, all of which were supported by a preponderance of the evidence and warranted the revocation of his probation (see People v October, 187 AD3d 1247, 1248 [2020], lv denied 36 NY3d 930 [2020]; People v Peasley, 184 AD3d 911, 912 [2020], lv denied 35 NY3d 1069 [2020]). Contrary to defendant's claim, County Court adequately set forth the basis for its decision to revoke his probation and was not statutorily required to engaged in any particular form of fact-finding (see CPL 410.70 [5]). As for defendant's challenge to the severity of the sentence, we find no extraordinary circumstances or abuse of discretion warranting a reduction in the interest of justice (see People v October, 187 AD3d at 1249; People v Peasley, 184 AD3d at 912).

Clark, Aarons, 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 style with a large, prominent "R" and "M".

Robert D. Mayberger
Clerk of the Court