

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

Decided and Entered: September 29, 2022

110847

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

CHRISTOPHER SMITH,

Appellant.

Calendar Date: September 12, 2022

Before: Egan Jr., J.P., Pritzker, Reynolds Fitzgerald, Ceresia
and Fisher, JJ.

Del Atwell, East Hampton, for appellant.

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

Reynolds Fitzgerald, J.

Appeal from a judgment of the County Court of Albany
County (William A. Carter, J.), rendered August 22, 2018,
convicting defendant upon his plea of guilty of the crime of
arson in the second degree.

Defendant was charged by indictment with arson in the
second degree and thereafter agreed to plead guilty to the
charged crime with the understanding that he would be sentenced
to a prison term of no less than five years and no more than 10
years – followed by three years of postrelease supervision. The
plea agreement also required defendant to waive his right to

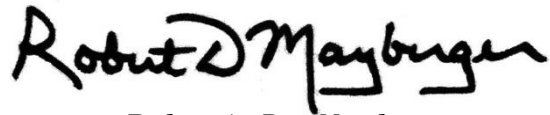
appeal. Defendant pleaded guilty in conformity with the plea agreement, and County Court subsequently sentenced defendant to a prison term of seven years followed by three years of postrelease supervision. This appeal ensued.

We affirm. The People concede – and our review of the record confirms – that defendant's waiver of the right to appeal is invalid, as County Court, among other things, "neither adequately explained the nature of the waiver nor ascertained defendant's understanding of the ramifications thereof" (*People v Alexander*, 194 AD3d 1261, 1262 [3d Dept 2021], *lv denied* 37 NY3d 1094 [2021]; *see People v Boyd*, 206 AD3d 1350, 1351 [3d Dept 2022], *lv denied* ___ NY3d ___ [Aug. 31, 2022]; *People v Lilliard*, 206 AD3d 1241, 1242 [3d Dept 2022]). As a result, defendant's challenge to the perceived severity of his sentence is not precluded (*see People v Davis*, 199 AD3d 1123, 1124-1125 [3d Dept 2021], *lv denied* 37 NY3d 1160 [2022]). That said, we do not find the sentence imposed to be unduly harsh or severe (*see* CPL 470.15 [6] [b]). The sentence imposed was well within both the permissible statutory range (*see* Penal Law §§ 70.02 [1] [a]; [3] [a]; 150.15) and the sentencing parameters set forth by County Court in the context of the plea agreement. Contrary to defendant's assertion, the mere fact that County Court ultimately did not impose the minimum term of imprisonment desired by defendant at the time of sentencing did not result in the imposition of an "enhanced" sentence. Defendant's remaining arguments on this point, to the extent not specifically addressed, have been examined and found to be lacking in merit.

Egan Jr., J.P., Pritzker, Ceresia and Fisher, 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