

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

Decided and Entered: March 17, 2022

111990

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

GENEVA DAVIS,

Appellant.

Calendar Date: February 17, 2022

Before: Garry, P.J., Lynch, Pritzker, Colangelo and McShan, JJ.

Dennis J. Lamb, Troy, for appellant.

Robert M. Carney, District Attorney, Schenectady (Peter H. Willis of counsel), for respondent.

Lynch, J.

Appeal from a judgment of the Supreme Court (Hogan, J.), rendered July 11, 2019 in Schenectady County, convicting defendant upon her plea of guilty of the crime of grand larceny in the fourth degree.

Defendant waived indictment and pleaded guilty to a superior court information charging her with grand larceny in the fourth degree and purportedly waived the right to appeal. Supreme Court sentenced defendant to one year in jail and ordered her to pay \$120 in restitution. Defendant appeals.

Initially, the validity of defendant's appeal waiver is of no consequence because her remaining contention regarding the accuracy of the uniform sentence and commitment form survives a valid appeal waiver (see e.g. People v Miller, 172 AD3d 1530, 1532-1533 [2019], lv denied 34 NY3d 935 [2019]; People v Payne, 148 AD3d 1226, 1228 [2017], lv denied 29 NY3d 1084 [2017]). As to that contention, the parties agree that the amount of restitution ordered by Supreme Court was \$120, not the \$200 referenced on the uniform sentence and commitment form. Although the judgment need not be disturbed, the matter is remitted to Supreme Court for an entry of an amended uniform sentence and commitment form that accurately reflects the amount of restitution ordered as \$120 (see People v McMillan, 185 AD3d 1208, 1213 [2020], lvs denied 35 NY3d 1112, 1114 [2020]; People v Jones, 146 AD3d 1078, 1081-1082 [2017], lv denied 29 NY3d 999 [2017]).

Garry, P.J., Pritzker, Colangelo and McShan, JJ., concur.

ORDERED that the judgment is affirmed, and matter remitted to the Supreme Court for the entry of an amended uniform sentence and commitment form.

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