

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

Decided and Entered: November 3, 2022

112751

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ROBERT T. BRUNO,

Appellant.

Calendar Date: October 7, 2022

Before: Lynch, J.P., Clark, Pritzker, Reynolds Fitzgerald and
Ceresia, JJ.

Marlene O. Tuczinski, Chatham, for appellant.

Joseph Stanzione, District Attorney, Catskill (Denise J.
Kerrigan of counsel), for respondent.

Appeal from a judgment of the County Court of Greene
County (Terry J. Wilhelm, J.), rendered September 11, 2020,
convicting defendant upon his plea of guilty of the crime of
rape in the first degree.

Defendant was charged in an indictment with rape in the
first degree and course of sexual conduct against a child in the
first degree. The charges stemmed from allegations that
defendant had sexual intercourse with the victim periodically
over several years, beginning when the child was 12 years old.
After defendant pleaded guilty to rape in the first degree and
purportedly waived the right to appeal, County Court sentenced

defendant to five years in prison, to be followed by 20 years of postrelease supervision (hereinafter PRS). Defendant appeals.

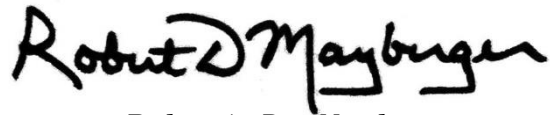
We affirm. Initially, we agree with defendant that his waiver of the right to appeal is invalid. The oral colloquy included language that suggested that the appeal waiver is an absolute bar to all appellate review (*see People v Marone*, 206 AD3d 1039, 1041 [3d Dept 2022]) and, although defendant also signed a written waiver, it did not contain any language alleviating County Court's misleading colloquy (*see People v Thomas*, 34 NY3d 545, 565-566 [2019]; *People v Marone*, 206 AD3d at 1041). Accordingly, we conclude that defendant did not knowingly, intelligently and voluntarily waive the right to appeal (*see People v Jackson*, 206 AD3d 1244, 1245 [3d Dept 2022], *lv denied* 38 NY3d 1151 [2022]; *People v Katoom*, 205 AD3d 1132, 1133 [3d Dept 2022]).

Defendant also contends that County Court's imposition of a 20-year period of PRS is harsh and excessive. The record reflects that defendant pleaded guilty with the understanding that, although no particular amount of PRS was made part of the plea agreement, the People would recommend that a 20-year PRS period be imposed. Considering the nature of the crime and the fact that defendant was sentenced to the minimum term of imprisonment allowed (*see Penal Law § 70.80 [4] [a] [i]*), we do not find the imposition of the maximum period of PRS (*see Penal Law § 70.45 [2-a] [c]*) to be "unduly harsh or severe" (CPL 470.15 [6] [b]; *see People v Williams*, 126 AD3d 1181, 1182 [3d Dept 2015], *lv denied* 25 NY3d 1209 [2015]; *People v Witbeck*, 299 AD2d 726, 726-727 [3d Dept 2002], *lv denied* 99 NY2d 621 [2003]).

Lynch, J.P., Clark, Pritzker, Reynolds Fitzgerald and Ceresia, 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