

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

Decided and Entered: August 10, 2023

112536

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THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MALCOLM MOORE,

Appellant.

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Calendar Date: June 23, 2023

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

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*Sandra M. Colatosti*, Albany, for appellant.

*Letitia James*, Attorney General, New York City (*Hannah Stith Long* of counsel),  
for respondent.

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Appeal from a judgment of the County Court of Albany County (William A. Carter, J.), rendered March 1, 2019, convicting defendant upon his plea of guilty of the crime of criminal sale of a controlled substance in the second degree.

Defendant and his 12 codefendants were charged in an 84-count indictment with conspiracy in the second degree and various drug-related crimes. In full satisfaction of the four counts pertaining to him, defendant agreed to plead guilty to one count of criminal sale of a controlled substance in the second degree with the understanding that he would be sentenced to a prison term of no more than seven years followed by five 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 sentenced defendant to a prison term of six years followed by five years of postrelease supervision. This appeal ensued.

The People concede – and our review of the record confirms – that defendant's waiver of the right to appeal is invalid. The written waiver of appeal executed by defendant contained overbroad language, and County Court's brief colloquy with defendant neither explained the nature and ramifications of the appeal waiver, cured the deficiencies embodied in the written waiver nor otherwise conveyed to defendant that some appellate review survived (*see People v Boyd*, 206 AD3d 1350, 1351 [3d Dept 2022], *lv denied* 38 NY3d 1149 [2022]; *People v Lilliard*, 206 AD3d 1241, 1242 [3d Dept 2022]). Given the invalid appeal waiver, defendant's challenge to the severity of his sentence is not precluded (*see People v Loya*, 215 AD3d 1181, 1182 [3d Dept 2023], *lv denied* 40 NY3d 929 [2023]). However, upon reviewing the record and considering all of the relevant circumstances, including defendant's criminal history and the fact that the sentence imposed fell within both the agreed-upon range and the statutory parameters for a class A-II felony (*see* Penal Law §§ 70.71 [2] [b] [ii]; 220.41 [1]), we do not find such sentence to be unduly harsh or severe (*see* CPL 470.15 [6] [b]) and decline defendant's invitation to modify it in the interest of justice.

Egan Jr., J.P., Aarons, 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