

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

Decided and Entered: November 16, 2023

112748

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MANSA WILKERSON,

Appellant.

Calendar Date: October 11, 2023

Before: Clark, J.P., Aarons, Reynolds Fitzgerald, Fisher and McShan, JJ.

Carolyn B. George, Albany, for appellant.

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

Reynolds Fitzgerald, J.

Appeal from a judgment of the County Court of Schenectady County (Mark J. Caruso, J.), rendered January 25, 2019, convicting defendant upon his plea of guilty of the crime of criminally negligent homicide.

Defendant was charged in a five-count indictment with various charges, including manslaughter in the second degree. Following a suppression hearing, but prior to a decision thereon, defendant pleaded guilty to criminally negligent homicide in satisfaction of the indictment and purportedly waived the right to appeal. County Court thereafter sentenced defendant to the agreed-upon prison term of 1 to 3 years. Defendant appeals.

Initially, we find that defendant did not validly waive the right to appeal "as the written waiver is overbroad and inaccurate, and County Court did not overcome the overbroad language by ensuring that defendant understood that some appellate and collateral review survived an appeal waiver" (*People v Faulkner*, 217 AD3d 1143, 1143 [3d Dept 2023] [internal quotation marks, ellipsis, brackets and citations omitted]; see *People v Faublas*, 216 AD3d 1358, 1358 [3d Dept 2023], *lv denied* 40 NY3d 934 [2023]). Defendant's challenges to the voluntariness of his plea and his claim of ineffective assistance of counsel, to the extent it implicates the voluntariness of his plea, are unpreserved for our review as the record does not indicate that he made an appropriate postallocution motion (see *People v Vilbrin*, 183 AD3d 1012, 1013 [3d Dept 2020], *lv denied* 35 NY3d 1049 [2020]; *People v White*, 172 AD3d 1822, 1823-1824 [3d Dept 2019], *lv denied* 33 NY3d 1110 [2019]), and the narrow exception to the preservation rule was not triggered (see *People v Lomack*, 217 AD3d 1281, 1282 [3d Dept 2023], *lv denied* 40 NY3d 951 [2023]; *People v Loya*, 215 AD3d 1181, 1183 [3d Dept 2023], *lv denied* 40 NY3d 929 [2023]). Defendant's remaining claim of ineffective assistance of counsel that is premised on counsel's representation at the suppression hearing is foreclosed by his guilty plea (see *People v Darby*, 206 AD3d 1165, 1169 [3d Dept 2022], *lv denied* 38 NY3d 1149 [2022]; *People v Burks*, 187 AD3d 1405, 1408 [3d Dept 2020], *lv denied* 36 NY3d 1095 [2021]).

Clark, J.P., Aarons, Fisher and McShan, 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