

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

Decided and Entered: September 28, 2023

112884

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

CHRISTIAN M. CRANNELL,
Appellant.

Calendar Date: September 1, 2023

Before: Egan Jr., J.P., Clark, Pritzker, Ceresia and Mackey, JJ.

Marlene O. Tuczinski, Chatham, for appellant, and appellant pro se.

Karen A. Heggen, District Attorney, Ballston Spa (*John B. Latella III* of counsel),
for respondent.

Appeal from a judgment of the Supreme Court (Kathleen B. Hogan, J.), rendered January 20, 2021 in Saratoga County, convicting defendant upon his plea of guilty of the crime of burglary in the second degree.

Defendant was indicted and charged with burglary in the first degree, robbery in the first degree, burglary in the second degree, criminal possession of a weapon in the third degree, criminal mischief in the third degree and two counts of grand larceny in the fourth degree. In full satisfaction of that indictment, defendant was offered the opportunity to plead guilty to burglary in the second degree with the understanding that he would be sentenced to a determinate term of imprisonment ranging from 8 to 12 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

agreement, and Supreme Court sentenced defendant to a prison term of 12 years followed by five years of postrelease supervision. This appeal ensued.

We affirm. The People concede that the written waiver of appeal is invalid as it contains inaccurate and overbroad language, and Supreme Court's oral waiver colloquy is virtually indistinguishable from the explanation of the waiver provided in *People v McLaughlin* (208 AD3d 1556 [3d Dept 2022], *lv denied* 39 NY3d 1074 [2023]), which we deemed "insufficient to cure the multiple mischaracterizations in the written waiver or to demonstrate that defendant understood the nature and consequences of the waiver of appellate rights" (*id.* at 1557 [internal quotation marks and citations omitted]). Accordingly, given the invalid appeal waiver, defendant's challenge to the severity of his sentence is not precluded (*see People v Tiggs*, 216 AD3d 1357, 1357 [3d Dept 2023], *lv denied* ___ NY3d ___ [Aug. 29, 2023]). However, upon reviewing the record and considering all of the relevant circumstances, including defendant's extensive criminal history, we do not find the sentence imposed to be unduly harsh or severe (*see* CPL 470.15 [6] [b]) and decline defendant's invitation to reduce it in the interest of justice (*see* CPL 470.15 [3] [c]).

Egan Jr., J.P., Clark, Pritzker, Ceresia and Mackey, 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