

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

Decided and Entered: November 2, 2023

113360

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

LEROY ADKINS,

Appellant.

Calendar Date: October 6, 2023

Before: Garry, P.J., Egan Jr., Aarons, Powers and Mackey, JJ.

Tina K. Sodhi, Alternate Public Defender, Albany (Steven M. Sharp of counsel),
for appellant.

P. David Soares, District Attorney, Albany (Daniel J. Young of counsel), for
respondent.

Appeal from a judgment of the Supreme Court (Roger D. McDonough, J.),
rendered October 22, 2021 in Albany County, convicting defendant upon his plea of
guilty of the crime of aggravated driving while intoxicated.

In full satisfaction of a four-count indictment, defendant pleaded guilty to a single
count of aggravated driving while intoxicated with the understanding that he would be
sentenced to a prison term of 1 $\frac{2}{3}$ to 5 years and other applicable penalties would be
imposed. As part of this agreement, defendant was required to waive his right to appeal
and executed a written waiver in accordance therewith. Supreme Court imposed the
contemplated sentence, and this appeal ensued.

We affirm. Initially, the People concede, and our review of the record confirms, that defendant's waiver of his right to appeal is invalid due to the overbroad language utilized in the written waiver and Supreme Court's terse oral colloquy which did not adequately explain or elicit from defendant that he understood the nature and ramifications of this waiver (*see People v Hawkins*, 219 AD3d 1021, 1022 [3d Dept 2023]; *People v Jacobs*, 214 AD3d 1258, 1259 [3d Dept 2023], *lv denied* 40 NY3d 929 [2023]). As such, defendant's challenge to the severity of his sentence is not precluded (*see People v Spencer*, 219 AD3d 981, 983 [3d Dept 2023]). In advocating for a reduction in his sentence, defendant relies upon the fact that the events in question resulted in no accident or injury and that he took responsibility; nevertheless, defendant has an extensive criminal history which includes two prior convictions for alcohol-related driving offenses within 10 years preceding the instant offense. Accordingly, noting that the agreed-upon sentence for defendant's conviction of aggravated driving while intoxicated was statutorily permissible and below the maximum (*see Vehicle and Traffic Law* § 1193 [1] [c] [ii]; *Penal Law* § 70.00 [2] [d]; [3] [b]), we do not find such sentence to be either unduly harsh or severe (*see CPL* 470.15 [6] [b]).

Garry, P.J., Egan Jr., Aarons, Powers 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