

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

Decided and Entered: November 14, 2024

113164

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

JAMES C. SITTS,

Appellant.

Calendar Date: October 15, 2024

Before: Clark, J.P., Pritzker, Lynch, Fisher and Powers, JJ.

Rural Law Center of New York, Inc., Plattsburgh (*Keith F. Schockmel* of counsel),
for appellant.

John M. Muehl, District Attorney, Cooperstown (*Christopher James Di Donna* of
counsel), for respondent.

Powers, J.

Appeal from a judgment of the County Court of Otsego County (John F. Lambert, J.), rendered August 2, 2021, convicting defendant upon his plea of guilty of the crime of attempted burglary in the second degree.

Defendant was charged in a six-count indictment with two counts of burglary in the second degree, grand larceny in the third degree and three counts of grand larceny in the fourth degree. Following numerous unsuccessful motions to, among other things, dismiss the indictment on speedy trial grounds, defendant ultimately pleaded guilty to the reduced charge of attempted burglary in the second degree and agreed to waive his right

to appeal. In accordance with the terms of the plea agreement, County Court sentenced defendant, as a second felony offender, to a prison term of five years, to be followed by five years of postrelease supervision. Defendant appeals.

We affirm. Contrary to defendant's contention, the record reflects that his waiver of his right to appeal is valid. The combined oral waiver and written waiver, which defendant read and reviewed with counsel during the plea allocution,¹ made clear that the appeal waiver was separate and distinct from the rights waived by defendant's guilty plea and that certain nonwaivable appellate rights survived, enumerating specific examples. Defendant assured County Court that he had sufficient time to confer with counsel and understood the nature and ramifications of the waiver. Upon review, we are satisfied that defendant knowingly, voluntarily and intelligently waived his right to appeal (*see People v Lopez*, 6 NY3d 248, 256 [2006]; *People v Pepe*, 229 AD3d 1007, 1007-1008 [3d Dept 2024]; *People v Joseph*, 227 AD3d 1233, 1234-1235 [3d Dept 2024]; *compare People v Mitchell*, 228 AD3d 997, 998 [3d Dept 2024]; *People v Thompson*, 157 AD3d 1141, 1141 [3d Dept 2018]). Given the valid appeal waiver, defendant's challenge to the perceived severity of the sentence is precluded (*see People v Pepe*, 229 AD3d at 1008; *People v Brunson*, 185 AD3d 1300, 1300 [3d Dept 2020], *lv denied* 36 NY3d 928 [2020]), as is his assertion that he was denied his statutory right to a speedy trial (*see People v Wint*, 222 AD3d 1050, 1051 [3d Dept 2023], *lv denied* 41 NY3d 945 [2024]; *People v Kidd*, 210 AD3d 1148, 1149-1150 [3d Dept 2022], *lv denied* 39 NY3d 1073 [2023]; *People v Dennis*, 206 AD3d 1369, 1371 [3d Dept 2022]).

Clark, J.P., Pritzker, Lynch and Fisher, JJ., concur.

¹ Although defendant read and reviewed with counsel the written appeal waiver during the plea allocution, assuring County Court that he had no questions and understood its contents, it was not executed until counsel again reviewed it with defendant at sentencing.

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 style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court