

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

Decided and Entered: May 23, 2024

113377

113378

113379

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

CARISSA L. GLICKSMAN,
Appellant.

Calendar Date: April 25, 2024

Before: Egan Jr., J.P., Aarons, Fisher, McShan and Mackey, JJ.

Lisa A. Burgess, Indian Lake, for appellant.

Andrew J. Wylie, District Attorney, Plattsburgh (*Jaime A. Douthat* of counsel), for respondent.

Egan Jr., J.P.

Appeals (1) from a judgment of the County Court of Clinton County (William A. Favreau, J.), rendered August 12, 2021, which revoked defendant's probation and imposed a sentence of imprisonment, (2) from a judgment of said court, rendered August 12, 2021, convicting defendant upon her plea of guilty of the crime of forgery in the second degree, and (3) from a judgment of said court, rendered August 12, 2021, convicting defendant upon her plea of guilty of the crime of identity theft in the first degree.

In 2018, defendant was convicted, upon her guilty plea, of two counts each of forgery in the second degree and attempted burglary in the second degree as charged in a superior court information (hereinafter the first SCI), satisfying numerous charges for criminal conduct spanning 2015 and 2016. She was sentenced to five years of probation, subject to certain conditions, and ordered to pay restitution. A 2020 violation of probation petition was resolved in January 2021, when defendant admitted violating the terms of probation and was resentenced to six weekends in jail, which was conditionally discharged subject to her continued employment at a specific coffee shop. Shortly thereafter, another violation of probation petition was filed and amended several times charging defendant with violating the conditions of her probation by failing to remain employed and providing the Probation Department with three falsified paystubs indicating that she worked at the coffee shop on specified dates in January 2021, although her probation officer contacted the manager and learned that she had never been employed at the shop and that the pay stubs she submitted had been falsified. As a result, defendant was arrested and charged with forgery in the second degree in March 2021. The following month, defendant was arrested for identity theft in the first degree and other crimes stemming from conduct committed between July 2018 and March 2020 in assuming the identity of her mother by using her personal information to obtain credit cards and incur charges, and the violation of probation petition was again amended.

Defendant thereafter admitted violating probation by submitting forged paystubs, with sentencing left to County Court's discretion, and her probation was revoked; she was resentenced upon her convictions under the first SCI for attempted burglary in the second degree to a prison term of four years to be followed by two years of postrelease supervision (hereinafter PRS) and, for her forgery in the second degree convictions, to 1 to 3 years in prison, said sentences to run concurrently to one another. As to the new charges, defendant waived indictment and pleaded guilty to forgery in the second degree as charged in a second SCI without a sentencing commitment, and was sentenced, as an acknowledged second felony offender, to a prison term of 2½ to 5 years. Defendant subsequently also pleaded guilty, pursuant to a plea agreement, to identity theft in the first degree as charged in a third SCI and was sentenced, as a second felony offender, to a negotiated prison term of 3 to 6 years. All sentences were imposed at an appearance on August 12, 2021. The sentences imposed upon her convictions under the second and third SCIs were ordered to run concurrently to one another but both were ordered to be served consecutively to her resentence under the first SCI upon her admission to violating probation. Defendant appeals from all three judgments.

Initially, defendant contends that the facts underlying the charge of, and her guilty plea allocution to, forgery in the second degree as charged in the second SCI – which stemmed from her submission of falsified pay stubs to the Probation Department in an effort to satisfy the probationary condition that she remain employed at the coffee shop – failed to establish a necessary element of that crime in that the pay stubs did not constitute a "public record" (Penal Law § 170.10 [2]). However, this claim is unpreserved for our review as the record does not reflect that she made a postallocution motion on this ground despite ample opportunity to do so prior to sentencing (*see People v Williams*, 27 NY3d 212, 219-222 [2016]; *People v Greene*, 207 AD3d 804, 805 [3d Dept 2022], *lv denied* 38 NY3d 1150 [2022]). Defendant made no statements during the plea allocution casting doubt on the voluntariness of her plea or her guilt, or negating any element of that crime, all of which elements were recited as part of her guilty plea, so as to trigger the narrow exception to the preservation requirement (*see People v Lopez*, 71 NY2d 662, 666 [1988]; *People v Greene*, 207 AD3d at 805). Moreover, the second SCI was not jurisdictionally defective, a claim that survives her guilty plea and is not subject to preservation rules, as it "effectively charg[ed her] with the commission of a particular crime" in that it alleged that she "committed acts constituting every material element of the crime charged" of forgery in the second degree under Penal Law § 170.10 (2), incorporating that statute by specific reference (*People v D'Angelo*, 98 NY2d 733, 734-735 [2002]; *see People v Saenger*, 39 NY3d 433, 438 [2023]; *People v West*, 215 AD3d 1067, 1068-1069 [3d Dept 2023]; *People v Ferretti*, 209 AD3d 1173, 1174 [3d Dept 2022]). To the extent that defendant is challenging the sufficiency of the factual allegations in the second SCI, this nonjurisdictional defect was forfeited by her guilty plea (*see People v Guerrero*, 28 NY3d 110, 116 [2016]; *People v Beattie*, 80 NY2d 840, 842 [1992]; *People v West*, 215 AD3d at 1068-1069).

Defendant further contends that her aggregate prison sentence (*see* Penal Law § 70.30 [1] [d]) is harsh and excessive and asks this Court to reduce it in the interest of justice. The sentences imposed on each SCI were less than the maximum permissible sentences, as defendant could have been resentenced, upon her admission to violating probation, to a prison term of up to seven years on the attempted burglary in the second degree conviction, a class D violent felony, and to PRS of up to three years (*see* Penal Law §§ 60.01 [3] [a]; 70.00 [6]; 70.02 [1] [b], [c]; [3] [c]; 70.45 [2] [e]), in addition to a prison term of 3½ to 7 years on the forgery in the second degree and identity theft convictions under the second and third SCIs, as a second felony offender (*see* Penal Law §§ 60.05 [6]; 70.06 [3] [d]; [4] [b]). The concurrent sentences imposed for the

convictions under the second and third SCIs could have been ordered to be served consecutively given that the acts underlying those convictions involved separate criminal conduct committed at different times (*see* Penal Law § 70.25 [2]; *People v Brahney*, 29 NY3d 10, 13-15 [2017]). Defendant was shown considerable leniency when placed on probation for similar crimes in 2013 and when initially placed on probation in 2018 for her convictions under the first SCI; in 2021, when she violated probation for, among other transgressions, submitting forged documents to the Probation Department and failing to make restitution, she received a favorable sentence of weekends in jail, conditioned on, among other things, maintaining employment. Rather than abide that condition, she engaged in further criminal conduct while on probation by submitting falsified pay stubs, and lied to County Court and her probation officer, thereby violating probation again and committing forgery in the second degree. Despite being afforded multiple opportunities at probation and to make restitution, defendant was not deterred, continuing to defraud her victims for financial gain. Under these circumstances, we decline defendant's request to reduce the sentence in the interest of justice (*see* CPL 470.15 [3] [c]; [6] [b]).

Aarons, Fisher, McShan and Mackey, JJ., concur.

ORDERED that the judgments are 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