

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

Decided and Entered: October 31, 2024

113636

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

BRAIAN RAMIREZ-ORTIZ,
Appellant.

Calendar Date: October 4, 2024

Before: Egan Jr., J.P., Clark, Aarons, Ceresia and McShan, JJ.

Todd G. Monahan, Schenectady, for appellant.

Karen A. Heggen, District Attorney, Ballston Spa (*Benjamin E. Holwitt* of counsel), for respondent.

Appeal from a judgment of the County Court of Saratoga County (James A. Murphy III, J.), rendered March 29, 2022, convicting defendant upon his plea of guilty of the crime of criminal mischief in the third degree.

In satisfaction of a superior court information and other pending charges, defendant pleaded guilty to criminal mischief in the third degree and agreed to waive his right to appeal. Pursuant to the terms of the plea agreement, County Court sentenced defendant, as a second felony offender, to a prison term of 1½ to 3 years. This appeal ensued.

Defendant's sole contention on appeal is that the sentence, which he alleges is based upon unreliable and inaccurate information contained in the presentence report,

should be vacated. As the records of the Department of Corrections and Community Supervision confirm that defendant has reached the maximum expiration of his sentence, his challenge to the agreed-upon sentence is moot (*see People v Morris*, ___ AD3d ___, ___, 217 NYS3d 299, 299 [3d Dept 2024]; *People v Finn*, 215 AD3d 1179, 1180 [3d Dept 2023], *lv denied* 40 NY3d 928 [2023]; *People v Ramsoondar*, 206 AD3d 1157, 1161 [3d Dept 2022]; *People v Boodrow*, 205 AD3d 1134, 1137 [3d Dept 2022]), and the exception to the mootness doctrine does not apply (*see Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 717 [1980]; *see also People v Baldwin*, 39 NY3d 1097, 1098-1099 [2023] [Wilson, J., concurring]).

Egan Jr., J.P., Clark, Aarons, Ceresia and McShan, JJ., concur.

ORDERED that the appeal is dismissed, as moot.

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