

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

Decided and Entered: May 23, 2024

113653

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ZEKE D. WILMARTH,

Appellant.

Calendar Date: April 19, 2024

Before: Clark, J.P., Lynch, Reynolds Fitzgerald, Fisher and Mackey, JJ.

Michael T. Baker, Public Defender, Binghamton (Jonathan Rothermel of counsel),
for appellant.

F. Paul Battisti, District Attorney, Binghamton (Joann Rose Parry of counsel), for
respondent.

Appeal from a judgment of the County Court of Broome County (Joseph F. Cawley, J.), rendered June 30, 2022, convicting defendant upon his plea of guilty of the crimes of attempted murder in the first degree, assault in the first degree, criminal possession of a weapon in the third degree and strangulation in the second degree.

Following a violent stabbing and assault on his domestic partner in July 2021, defendant was indicted for the crimes of attempted murder in the first degree, assault in the first degree, criminal possession of a weapon in the third degree and strangulation in the second degree. Pursuant to a plea agreement, defendant pleaded guilty to the entire indictment in exchange for a promise that sentencing would be capped at 15 years in prison with five years of postrelease supervision (hereinafter PRS). Upon his convictions

for attempted murder in the second degree and assault in the first degree, County Court imposed concurrent 15-year prison terms to be followed by five years of PRS, and lesser concurrent prison terms and a period of PRS on the remaining convictions, as an acknowledged second felony offender. Defendant appeals.

Defendant's sole contention is that the prison sentence imposed is harsh and excessive, which he asks this Court to reduce to the minimum permissible prison term of eight years based upon the victim's request for leniency, defendant's expressions of forgiveness and his long-term heavy drug use, including on the day of these crimes (*see* CPL 470.15 [3] [c]). However, defendant has an extensive criminal history including four prior incidents of domestic violence, and has had multiple opportunities to benefit from substance abuse treatment. As a second felony offender convicted of the class B violent felonies of attempted murder in the first degree and assault in the first degree (*see* Penal Law § 70.02 [1] [a]), defendant could have been sentenced to a prison term of up to 25 years, and the sentence that he actually received, 15 years, was closer to the minimum permissible term (*see* Penal Law § 70.06 [6] [a]). Given the brutal nature of these crimes and defendant's extensive criminal history, we do not find the agreed-upon terms of imprisonment or maximum period of PRS imposed to be unduly harsh or severe (*see* CPL 470.15 [6] [b]; Penal Law § 70.45 [2]), and we decline defendant's invitation to modify his sentence in the interest of justice. Accordingly, the judgment of conviction is affirmed.

Clark, J.P., Lynch, Reynolds Fitzgerald, Fisher 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 style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court