

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

Decided and Entered: July 25, 2024

113680

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

PAUL PEPE,

Appellant.

Calendar Date: June 14, 2024

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

Marshall Nadan, Kingston, for appellant.

Brian P. Conaty, District Attorney, Monticello (*Thomas W. Raleigh* of counsel),
for respondent.

Appeal from a judgment of the County Court of Sullivan County (James R. Farrell, J.), rendered May 5, 2022, convicting defendant upon his plea of guilty of the crime of criminal sexual act in the first degree.

Defendant was charged by indictment with predatory sexual assault against a child, a class A-II felony, stemming from his conduct in subjecting a child under the age of 13 to sexual contact on multiple occasions over a two-year period. In satisfaction of the indictment, defendant pleaded guilty to the reduced charge of criminal sexual act in the first degree. Pursuant to the plea agreement, defendant executed a waiver of appeal and was sentenced to the agreed-upon prison term of 10 years to be followed by 18 years of postrelease supervision. Defendant appeals.

We affirm. Defendant's sole contention on appeal is that his sentence is harsh and excessive, a claim which he argues may be raised in that the waiver of appeal is invalid. Contrary to his contention, the record reflects that a waiver of appeal was an express condition of the plea agreement, defendant was advised of its separate and distinct nature, the consequences of the waiver and that certain enumerated rights survive the waiver, and he assured County Court that he had discussed it with counsel. Defendant then signed a detailed written waiver of appeal that similarly advised him of his rights, and made clear that it was not an absolute bar to taking an appeal, but which expressly included a waiver of any challenge to the severity of the agreed-upon sentence. Both defendant and defense counsel confirmed that they had reviewed the waiver and its consequences, and defendant indicated that he understood it. Under these circumstances, we find that defendant's combined oral and written appeal waiver is valid and precludes his challenge to the severity of the agreed-upon sentence (*see People v Lopez*, 6 NY3d 248, 256 [2006]; *People v Gayle*, 221 AD3d 1061, 1062 [3d Dept 2023], *lv denied* 41 NY3d 1002 [2024]).

Garry, P.J., Clark, Pritzker, Fisher and Powers, 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