

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

Decided and Entered: December 11, 2025

CR-22-2106

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MICHAEL C. FREEMAN,
Appellant.

Calendar Date: November 13, 2025

Before: Clark, J.P., Reynolds Fitzgerald, Lynch, Ceresia and Powers, JJ.

Steven G. Cox, Utica, for appellant.

Robert A. Mascari, Acting District Attorney, Wampsville (*J. Sam Rodgers* of counsel), for respondent.

Clark, J.P.

Appeal from a judgment of the Supreme Court (Patrick O'Sullivan, J.), rendered October 17, 2022 in Madison County, convicting defendant upon his plea of guilty of the crime of burglary in the first degree.

In satisfaction of a seven-count indictment, defendant pleaded guilty to burglary in the first degree and purportedly waived his right to appeal. Appropriately accounting for the sympathetic circumstances reflected in a mitigation report prepared on defendant's behalf, as well as his "honesty" and cooperation with police, Supreme Court determined that the minimum possible prison term of five years, to be followed by five years of

postrelease supervision, was warranted and sentenced defendant accordingly. Defendant appeals.

Defendant asserts that the plea was not knowingly, voluntarily and intelligently entered given his cognitive limitations.¹ This contention, however, is unpreserved for our review, as defendant did not make an appropriate postallocation motion despite an opportunity to do so prior to sentencing, and a review of the record does not reflect that the narrow exception to the preservation requirement was triggered (*see People v Byrd*, 239 AD3d 1146, 1147 [3d Dept 2025]; *People v Dungey*, 216 AD3d 1367, 1368 [3d Dept 2023], *lv denied* 40 NY3d 928 [2023]). In any event, were we to address the issue, we would find it to be unavailing, as "nothing in the record or [defendant's] participation in the proceedings suggests that his . . . cognitive limitations rendered him incapable of understanding the proceedings or voluntarily entering a guilty plea" (*People v Dungey*, 216 AD3d at 1368; *see People v Kinner*, 147 AD2d 742, 743 [3d Dept 1989], *lv denied* 74 NY2d 665 [1989]).

Reynolds Fitzgerald, Lynch, Ceresia 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, flowing style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court

¹ Although defendant also challenges the validity of his waiver of the right to appeal, such issue need not be addressed as the challenge to the voluntariness of the plea survives even a valid appeal waiver (*see People v Lopez*, 6 NY3d 248, 255 [2006]; *People v Lewis*, 234 AD3d 1209, 1210 [3d Dept 2025], *lv denied* 43 NY3d 1009 [2025]).