

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

Decided and Entered: April 24, 2025

CR-23-0905

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

TYRON HELMS,

Appellant.

Calendar Date: March 26, 2025

Before: Clark, J.P., Aarons, Pritzker, Ceresia and Fisher, JJ.

Stephen W. Herrick, Public Defender, Albany (James A. Bartosik Jr. of counsel),
for appellant.

Lee C. Kindlon, District Attorney, Albany (Emily Schultz of counsel), for
respondent.

Clark, J.P.

Appeal from a judgment of the County Court of Albany County (Andra Ackerman, J.), rendered October 18, 2022, convicting defendant upon his plea of guilty of the crime of attempted assault in the first degree.

Following an incident where defendant stabbed his romantic partner in the face and hand with a knife, defendant was charged in an indictment with two counts of assault in the first degree and one count of criminal possession of a weapon in the second degree. Pursuant to a plea agreement, defendant pleaded guilty to one count of attempted assault in the first degree and waived his right to appeal, with the understanding that he would be

sentenced to a prison term of no less than five years and no more than nine years, to be followed by five years of postrelease supervision. County Court thereafter sentenced defendant, as a second felony offender, to a prison term of nine years, to be followed by five years of postrelease supervision. Defendant appeals, arguing that his plea was not knowing, intelligent and voluntary. However, such contention is unpreserved for our review, as the record does not reflect that he made an appropriate postallocation motion, and there is nothing in the record that warrants the application of the narrow exception to the preservation rule (*see People v Gibbs*, 232 AD3d 937, 939 [3d Dept 2024]; *People v Wimberly*, 228 AD3d 1177, 1177 [3d Dept 2024], *lv denied* 42 NY3d 1022 [2024]). To the extent not expressly addressed herein, defendant's remaining contentions have been reviewed and found to lack merit.

Aarons, Pritzker, Ceresia and Fisher, 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