

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

Decided and Entered: July 2, 2026

CR-24-0498

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

FARRAH G. SINGLETON,
Appellant.

Calendar Date: May 29, 2026

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

Erin C. Morigerato, Albany, for appellant.

F. Paul Battisti, District Attorney, Binghamton (*Mary E. Saitta* of counsel), for respondent.

Aarons, J.

Appeal from a judgment of the County Court of Broome County (Carol Cocchiola, J.), rendered June 9, 2023, convicting defendant upon his plea of guilty of the crime of burglary in the third degree.

In 2021, defendant was charged by felony complaint with burglary in the second degree after voluntarily entering a dwelling and stealing items related to tabletop gaming. In February 2023, pursuant to a negotiated disposition that contemplated a term of incarceration of 2½ to 5 years, defendant pleaded guilty to a superior court information

charging him with burglary in the third degree.¹ The terms of the plea agreement required defendant to waive his right to appeal both orally and in writing. At the plea colloquy, defendant was given *Parker* warnings and told that if he failed to cooperate with the Probation Department, got rearrested and charged with a new offense or failed to appear for sentencing, County Court was not bound by the plea agreement and could sentence defendant to a lengthier sentence of incarceration. Between the time of his guilty plea and sentencing, defendant was charged with additional crimes, including criminal obstruction of breathing, prompting County Court to adjourn the matter for a conference on the additional charges and the potential for an enhanced sentence. At sentencing, pursuant to a negotiated disposition that would dismiss the new charges and alleged violations of conditional discharge, County Court sentenced defendant, as a second felony offender, to an enhanced prison term of 3 to 6 years. Defendant appeals.

We are not persuaded by defendant's contention that the waiver of his right to appeal is invalid. Even were we to find that the written appeal waiver form contains, among other things, overbroad language, the oral colloquy and the assurances elicited from defendant with regard to his understanding of the nature and consequences of the appeal waiver were sufficient to support a knowing and voluntary waiver (*see People v Thomas*, 34 NY3d 545, 563-565 [2019]). In this regard, County Court explained to defendant that the appeal waiver, which was a condition of the plea agreement, is separate and distinct from the rights forfeited by the guilty plea. County Court advised defendant that, although most claims of error are waived, limited appellate claims nevertheless survived, some of which the court specifically identified. Defendant assured the court that he had discussed the appeal waiver with counsel, understood it and was voluntarily waiving his right to appeal. Under these circumstances, we find that the appeal waiver is valid (*see People v Byrd*, 247 AD3d 1356, 1357 [3d Dept 2026]; *People v Jackson*, 244 AD3d 1508, 1508 [3d Dept 2025]; *People v Gonzalez*, 234 AD3d 1186, 1187 [3d Dept 2025]; *People v Wheeler*, 221 AD3d 1349, 1350 [3d Dept 2023]). "Given the valid appeal waiver and County Court's advisement of the consequences of incurring additional criminal charges prior to sentencing, defendant's challenge to the severity of the [agreed-upon] enhanced sentence is precluded" (*People v Gonzalez*, 234 AD3d at 1187 [citation omitted]; *see People v Rowe*, 239 AD3d 1202, 1202 [3d Dept 2025], *lv*

¹ The plea agreement, among other things, also required defendant to plead guilty to other pending charges on three separate dockets in City Court for which defendant would receive conditional discharges that would run concurrent to his sentence in this matter.

denied 44 NY3d 984 [2025]; *People v Peters*, 238 AD3d 1391, 1392-1393 [3d Dept 2025]). To the extent that defendant contends that County Court erred in imposing an enhanced sentence – which he agreed to in exchange for dismissal of the additional postplea charges – "[s]uch claim is unpreserved because defendant did not object to the enhanced sentence or move to withdraw his guilty plea" (*People v James*, 231 AD3d 1435, 1436 [3d Dept 2024], *lv denied* 42 NY3d 1080 [2025]; *see People v Gonzalez*, 234 AD3d at 1187; *People v Davis*, 199 AD3d 1123, 1125 [3d Dept 2021], *lv denied* 37 NY3d 1160 [2022]).

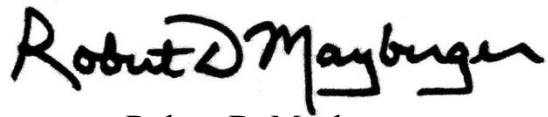
Although defendant's challenge to the voluntariness of his plea survives the valid waiver of appeal (*see People v Oliveira*, 244 AD3d 1411, 1411 [3d Dept 2025]; *People v Scully*, 242 AD3d 1259, 1259 [3d Dept 2025], *lv denied* 44 NY3d 1068 [2026]), this claim is unpreserved for our review in the absence of an appropriate postallocation motion (*see People v Nunnally*, 224 AD3d 992, 993-994 [3d Dept 2024], *lv denied* 41 NY3d 1004 [2024]; *see generally People v Rios*, ___ NY3d ___, ___, 2026 NY Slip Op 00963, *1 [2026]). In addition, the narrow exception to the preservation requirement was not triggered as defendant made no statements during the plea proceeding that " 'clearly casts significant doubt upon the defendant's guilt or otherwise calls into question the voluntariness of the plea' " (*People v Rios*, ___ NY3d at ___, 2026 NY Slip Op 00963, *1 [2026], quoting *People v Lopez*, 71 NY2d 662, 666 [1988]).

"Given the valid appeal waiver, defendant's claim that he was denied the effective assistance of counsel is precluded except insofar as the alleged ineffectiveness could be construed to have impacted upon the voluntariness of his plea" (*People v Blanchard*, 188 AD3d 1414, 1415-1416 [3d Dept 2020] [citations omitted], *lv denied* 36 NY3d 1055 [2021]). "To that extent, however, the absence of an appropriate postallocation motion renders the matter unpreserved" (*id.* at 1416 [citations omitted]; *see People v Brown*, 248 AD3d 1415, 1418 [3d Dept 2026]). The balance of defendant's ineffective assistance of counsel claim implicates matters outside of the record and, therefore, is more properly the subject of a CPL article 440 motion (*see People v Lewis*, 234 AD3d 1209, 1210 [3d Dept 2025], *lv denied* 43 NY3d 1009 [2025]; *People v Nunnally*, 224 AD3d at 994).

Clark, J.P., Ceresia, McShan 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