

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D58272  
T/afa

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Submitted - November 28, 2018

WILLIAM F. MASTRO, J.P.  
ROBERT J. MILLER  
COLLEEN D. DUFFY  
HECTOR D. LASALLE, JJ.

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2016-12125

DECISION & ORDER

The People, etc., respondent,  
v Ramsey Orta, appellant.

(Ind. No. 25/15)

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Janet E. Sabel, New York, NY (Katheryne M. Martone of counsel), for appellant.

Michael E. McMahon, District Attorney, Staten Island, NY (Morrie I. Kleinbart of counsel), for respondent.

Appeal by the defendant, as limited by his motion, from a sentence of the Supreme Court, Richmond County (Stephen J. Rooney, J.), imposed October 3, 2016, upon his plea of guilty, on the ground that the sentence was excessive.

ORDERED that the sentence is affirmed.

The defendant entered into a plea agreement pursuant to which, inter alia, he pleaded guilty to criminal sale of a controlled substance in the third degree. The defendant was sentenced, in accordance with the plea agreement, to a determinate term of imprisonment of four years plus 1½ years of postrelease supervision. On appeal, the defendant contends that his sentence was excessive. The People contend, among other things, that the defendant’s argument is precluded by his waiver of the right to appeal.

A waiver of the right to appeal “is effective only so long as the record demonstrates that it was made knowingly, intelligently and voluntarily” (*People v Lopez*, 6 NY3d 248, 256; see *People v Bradshaw*, 18 NY3d 257, 264; *People v Brown*, 122 AD3d 133, 136). Although the Court of Appeals has “repeatedly observed that there is no mandatory litany that must be used in order to obtain a valid waiver of appellate rights” (*People v Johnson*, 14 NY3d 483, 486), “[t]he best way

to ensure that the record reflects that the right is known and intentionally relinquished by the defendant is to fully explain to the defendant, on the record, the nature of the right to appeal and the consequences of waiving it” (*People v Brown*, 122 AD3d at 142; *see People v Rocchino*, 153 AD3d 1284; *People v Blackwood*, 148 AD3d 716, 716).

Here, the record of the plea proceedings, which included both an oral and written waiver of the defendant’s right to appeal, demonstrates that the defendant received an explanation of the nature of the right to appeal and the consequences of waiving that right (*see People v Bryant*, 28 NY3d 1094, 1096; *People v Leak*, 164 AD3d 606, 607). Furthermore, the record demonstrates that the defendant understood that his right to appeal was separate and distinct from those rights automatically forfeited upon a plea of guilty (*see People v Sanders*, 25 NY3d 337, 341; *People v Leak*, 164 AD3d at 607). On the record presented, we conclude that the defendant knowingly, voluntarily, and intelligently waived his right to appeal (*see generally People v Bryant*, 28 NY3d at 1096; *People v Sanders*, 25 NY3d at 341; *People v Bradshaw*, 18 NY3d at 264-267; *People v Ramos*, 7 NY3d 737, 738; *People v Lopez*, 6 NY3d at 255; *People v Hidalgo*, 91 NY2d 733, 735). The defendant’s valid waiver of his right to appeal precludes review of his contention that the sentence imposed was excessive (*see People v Leak*, 164 AD3d at 607; *People v Hardy*, 120 AD3d 1358, 1358; *People v Arteev*, 120 AD3d 1255, 1255).

MASTRO, J.P., MILLER, DUFFY and LASALLE, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court