

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

People v. McIntosh

2023 NY Slip Op 02809 (N.Y. Ct. App. 2023) (Appellate Division of the Supreme Court of the State of New York Third Department 2023) · No. 112116 · Decided May 25, 2023

SUMMARY

The Appellate Division, Third Department held that the defendant's waiver of the right to appeal was invalid because the trial court did not determine whether he remained willing to waive that right after imposing an enhanced sentence. The court nevertheless affirmed the judgment, concluding that the six-year prison sentence was not unduly harsh or severe.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Garry, P.J.; Lynch, J.; Clark, J.; Aarons, J.; Pritzker, J.
JURISDICTION	New York
DECIDED	May 25, 2023
DOCKET	112116
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the County Court of St. Lawrence County convicting him upon his guilty plea of burglary in the second degree and imposing a six-year prison term followed by five years of postrelease supervision.
STANDARD OF REVIEW	The court reviewed the sentence under CPL 470.15(6)(b) and determined whether it was unduly harsh or severe, considering all relevant factors.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Brett M. McIntosh v. The People of the State of New York

TOPICS

- sentencing
- appellate procedure
- criminal procedure
- right to counsel

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether defendant's waiver of the right to appeal was valid after the County Court withdrew the original sentencing commitment and imposed an enhanced sentence without determining whether defendant still wished to waive his right to appeal.
2. Whether the six-year prison sentence for second-degree burglary was unduly harsh or severe and should be reduced in the interest of justice.

HOLDINGS

1. A waiver of the right to appeal is invalid when the sentencing court imposes what amounts to an enhanced sentence without first ascertaining whether the defendant remains willing to waive the right to appeal.
2. The six-year prison sentence followed by five years of postrelease supervision was not unduly harsh or severe, and reduction in the interest of justice was unwarranted.

KEY QUOTATIONS

"We agree with defendant that his waiver of the right to appeal is invalid because County Court failed to ascertain, prior to imposing what amounted to an enhanced sentence, whether defendant remained willing to waive such right"

"Nonetheless, upon reviewing the record and considering all of the relevant factors, we do not find the sentence imposed to be unduly harsh or severe"

FACTUAL BACKGROUND

Defendant agreed to plead guilty to second-degree burglary in exchange for a four-and-one-half-year prison term, five years of postrelease supervision, and a waiver of appeal. During the plea allocation, the County Court learned that the homeowner had been present during the burglary and withdrew the sentencing commitment. Defendant elected to proceed with the plea after being advised that he would receive a six-year prison term, and the court imposed that sentence.

PROCEDURAL HISTORY

Defendant waived indictment and agreed to prosecution by superior court information. He entered a guilty plea under an agreement that included a four-and-one-half-year prison sentence and a waiver of appeal. During the plea allocation, the court learned that the homeowner had been present during the burglary, withdrew the original sentencing commitment, and offered a six-year sentence if defendant continued with the plea. Defendant proceeded, and the County Court imposed the revised sentence. The Appellate Division held the appeal waiver invalid but affirmed the judgment after finding the sentence not unduly harsh or severe.

DISPOSITION

affirmed

CASES CITED

- People v. Thompson, 205 A.D.3d 1232, 1232 (3d Dep't 2022)
- People v. McCarthy, 195 A.D.3d 1246, 1247 (3d Dep't 2021)
- People v. Sanchez, 194 A.D.3d 1199, 1201 (3d Dep't 2021)
- People v. Hockenbury, 190 A.D.3d 1155, 1156 (3d Dep't 2021), lv. denied, 37 N.Y.3d 957 (2021)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-appellate-division-of-the-supreme-court-of-the-state-of-new-york-third-department/2023/people-v-mcintosh-jlzpjjrz>