

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

Decided and Entered: February 2, 2012

104002

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

ANTOINE CATNOTT,

Appellant.

Calendar Date: January 10, 2012

Before: Mercure, Acting P.J., Rose, Spain, Malone Jr. and
McCarthy, JJ.

David E. Woodin, Catskill, for appellant.

James R. Farrell, District Attorney, Monticello (Bonnie M.
Mitzner of counsel), for respondent.

Rose, J.

Appeal from a judgment of the County Court of Sullivan
County (LaBuda, J.), rendered December 17, 2010, convicting
defendant upon his plea of guilty of the crime of criminal
possession of a controlled substance in the third degree.

Felony complaints were filed against defendant charging
him with criminal possession of a controlled substance in the
second degree and criminal possession of a controlled substance
in the third degree. Subsequently, a grand jury handed down an
indictment charging defendant with criminal possession of a
controlled substance in the fifth degree. The People indicated
that they were going to be submitting additional charges to the
grand jury upon receipt of weight analysis information from the

State Police lab. Pursuant to a plea agreement, defendant waived indictment with respect to the additional charges, waived his right to appeal and pleaded guilty to a superior court information charging him with criminal possession of a controlled substance in the third degree. In accordance with the plea agreement, the indicted charge was dismissed and defendant was sentenced to 3½ years in prison and two years of postrelease supervision.¹ Defendant now appeals.

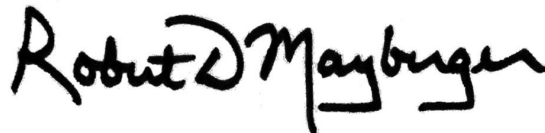
We find merit to defendant's argument that his waiver of indictment was not valid. While the record does reflect that defendant executed the written waiver of indictment on September 15, 2010, it is also clear from the record that he did not do so in open court on that date. The People argue in response that the written waiver was misdated, and that it was actually executed in open court on September 17, 2010. Nothing in the transcript of defendant's appearance on that date, however, supports the People's contention. Thus, the record does not reflect that defendant's written waiver complies with CPL 195.20, as is strictly and unequivocally required (see People v Donnelly, 23 AD3d 921, 921-922 [2005]; compare People v Davis, 84 AD3d 1645, 1646 [2011], lv denied 17 NY3d 815 [2011]; People v Sabin, 73 AD3d 1390, 1391 [2010], lv denied 15 NY3d 809 [2010]; People v Wicks, 42 AD3d 585, 585 [2007]). Accordingly, defendant's plea must be vacated.

Mercure, Acting P.J., Spain, Malone Jr. and McCarthy, JJ., concur.

¹ We note that defendant was initially sentenced to three years of postrelease supervision. However, this period was reduced to the legally authorized period of two years upon defendant's motion (see Penal Law § 70.45 [2] [b]).

ORDERED that the judgment is reversed, on the law, plea vacated, and matter remitted to the County Court of Sullivan County for further proceedings not inconsistent with this Court's decision.

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