

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

D55464  
L/htr

\_\_\_\_\_AD3d\_\_\_\_\_

ALAN D. SCHEINKMAN, P.J.  
CHERYL E. CHAMBERS  
SANDRA L. SGROI  
JOSEPH J. MALTESE  
FRANCESCA E. CONNOLLY, JJ.

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2015-05539

DECISION & ORDER

The People, etc., respondent,  
v Dana McWhite, appellant.

(Ind. No. 7947/14)

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Paul Skip Laisure, New York, NY (Lauren E. Jones of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Solomon Neubort of counsel; Masha Simonova on the memorandum), for respondent.

Appeal by the defendant, as limited by his motion, from a sentence of the Supreme Court, Kings County (Martin P. Murphy, J.), imposed June 9, 2015, upon his plea of guilty, on the ground that the sentence was excessive.

ORDERED that the sentence is affirmed.

Under the circumstances presented, the defendant's purported waiver of his right to appeal was invalid. The plea court's terse oral colloquy regarding the waiver of the right to appeal was insufficient, by itself, to ensure that the waiver was made knowingly, intelligently, and voluntarily (*see People v Bradshaw*, 18 NY3d 257; *People v Brown*, 122 AD3d 133). Although the defendant, who was reportedly illiterate and suffered from mental illness, signed a written waiver, there is no on-the-record confirmation that the form was read or thoroughly explained to him by counsel (*see People v Vasquez*, 101 AD3d 1054), and the court did not ask the defendant whether he could read or write. Accordingly, we reach the merits of the defendant's excessive sentence claim.

May 23, 2018

PEOPLE v McWHITE, DANA

Page 1.

Contrary to the defendant's contention, the sentence imposed, which was the agreed-upon sentence, was not excessive (*see People v Suitte*, 90 AD2d 80).

SCHEINKMAN, P.J., CHAMBERS, SGROI, MALTESE and CONNOLLY, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court