

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

D55553
O/htr

_____AD3d_____

Submitted - February 1, 2018

RUTH C. BALKIN, J.P.
CHERYL E. CHAMBERS
COLLEEN D. DUFFY
HECTOR D. LASALLE, JJ.

2016-11758

DECISION & ORDER

The People, etc., respondent,
v Robert M. Metzler, appellant.

(S.C.I. No. 264/14)

Del Atwell, East Hampton, NY, for appellant.

Robert Tendy, District Attorney, Carmel, NY (David M. Bishop of counsel), for respondent.

Appeal by the defendant from a resentence of the County Court, Putnam County (James F. Reitz, J.), imposed April 4, 2017, upon his conviction of burglary in the third degree (two counts), upon his plea of guilty. The defendant's notice of appeal from the judgment of conviction rendered September 29, 2016, is deemed a premature notice of appeal from the resentence imposed April 4, 2017 (*see* CPL 460.10[6]).

ORDERED that the resentence is affirmed.

As the original sentence of the judgment of conviction rendered September 29, 2016, was superseded by the resentence imposed April 4, 2017, we have deemed the notice of appeal from the judgment to be a premature notice of appeal from the resentence (*see* CPL 460.10[6]).

The defendant's valid waiver of his right to appeal precludes appellate review of his contention that the resentence imposed was excessive (*see People v Amay*, 156 AD3d 895; *People v Williams*, 122 AD3d 781; *People v Stewart*, 66 AD3d 924).

June 6, 2018

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The defendant's remaining contention regarding the legality of the original sentence has been rendered academic in light of the imposition of the lawful resentence.

BALKIN, J.P., CHAMBERS, DUFFY and LASALLE, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court