

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

D55649
C/hr

_____AD3d_____

Submitted - March 18, 2018

RUTH C. BALKIN, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
JOSEPH J. MALTESE
FRANCESCA E. CONNOLLY, JJ.

2016-11862

DECISION & ORDER

The People, etc., respondent,
v Joseph Faircloth, Jr., appellant.

(Ind. No. 87/16)

Thomas N. N. Angell, Poughkeepsie, NY (Steven Levine of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, NY (Kirsten A. Rappleyea of counsel), for respondent.

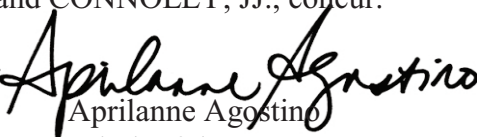
Appeal by the defendant from a judgment of the County Court, Dutchess County (Edward T. McLoughlin, J.), rendered October 21, 2016, convicting him of attempted criminal possession of a weapon in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

When the defendant waived his right to appeal, he was misinformed by the County Court that the maximum sentence that he could receive was seven years of imprisonment followed by three years of postrelease supervision. Subsequently, the defendant was sentenced to seven years of imprisonment followed by five years of postrelease supervision. Under these circumstances, the defendant's waiver of the right to appeal does not encompass his challenge to the severity of the sentence (*see People v Eron*, 79 AD3d 1774, 1775; *People v Fehr*, 303 AD2d 1039, 1040; *cf. People v Lococo*, 92 NY2d 825; *see also People v Eldridge*, 8 AD3d 294, 295). Nevertheless, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85-86).

BALKIN, J.P., CHAMBERS, ROMAN, MALTESE and CONNOLLY, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

June 13, 2018

PEOPLE v FAIRCLOTH, JOSEPH, JR.