

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

D56673  
O/htr

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Submitted - August 22, 2018

MARK C. DILLON, J.P.  
SANDRA L. SGROI  
SYLVIA O. HINDS-RADIX  
VALERIE BRATHWAITE NELSON  
ANGELA G. IANNACCI, JJ.

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2017-05554

DECISION & ORDER

The People, etc., respondent,  
v Odell A. James, appellant.

(Ind. No. 1881/16)

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Paul Skip Laisure, New York, NY (Lynn W. L. Fahey of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, NY (John M. Castellano, Johnette Traill, and Anastasia Spanakos of counsel; Eleanor Reilly on the memorandum), for respondent.

Appeal by the defendant, as limited by his motion, from a sentence of the Supreme Court, Queens County (Barry Kron, J.), imposed April 13, 2017, upon his plea of guilty, on the ground that the sentence was excessive.

ORDERED that the sentence is affirmed.

The defendant's purported waiver of his right to appeal was invalid (*see People v Vinson*, 161 AD3d 1109; *People v Rosa-Cruz*, 159 AD3d 837) because the record of the colloquy does not demonstrate that the defendant understood the distinction between the rights automatically waived by a plea of guilty and the waiver of the right to appeal (*see People v Lopez*, 6 NY3d 248, 257). In addition, there is no indication in the record as to whether the defendant read and understood the written waiver or discussed the written waiver with counsel (*see People v Johnson*, 157 AD3d 964). Thus, the purported waiver does not preclude review of the defendant's excessive sentence claim (*see People v Lopez*, 6 NY3d at 257). However, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

DILLON, J.P., SGROI, HINDS-RADIX, BRATHWAITE NELSON and IANNACCI, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

September 19, 2018

PEOPLE v JAMES, ODELL A.