

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

D57697  
O/htr

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

Submitted - November 28, 2018

REINALDO E. RIVERA, J.P.  
SANDRA L. SGROI  
SYLVIA O. HINDS-RADIX  
LINDA CHRISTOPHER, JJ.

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2017-00763

DECISION & ORDER

The People, etc., respondent,  
v Mauricio Fernandez, appellant.

(Ind. No. 789/16)

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Paul Skip Laisure, New York, NY (Caitlin Halpern of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, NY (John M. Castellano, Johnnette Traill, and Roni C. Piplani of counsel; Deanna Russo on the memorandum), for respondent.

Appeal by the defendant, as limited by his motion, from a sentence of the Supreme Court, Queens County (Suzanne J. Melendez, J.), imposed June 3, 2016, 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 because the Supreme Court's colloquy conflated the right to appeal with the rights that are automatically forfeited on a plea of guilty (*see People v Johnson*, 165 AD3d 702; *People v Glover*, 164 AD3d 1259; *People v Cardiello*, 164 AD3d 1254; *see generally People v Bradshaw*, 18 NY3d 257, 264). Further, although the defendant executed a written appeal waiver form, the court did not ascertain on the record whether the defendant had signed or read the waiver, or discussed it with defense counsel (*see People v Callahan*, 80 NY2d 273, 283; *People v Cardiello*, 164 AD3d 1254; *People v Brown*, 122 AD3d 133, 145). Thus, the waiver does not preclude review of the defendant's excessive sentence claim.

December 26, 2018

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However, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

RIVERA, J.P., SGROI, HINDS-RADIX and CHRISTOPHER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court