

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

D57698  
G/htr

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

Submitted - November 28, 2018

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

---

2016-09971

DECISION & ORDER

The People, etc., respondent,  
v Freddy Fitzhugh, appellant.

(Ind. No. 8831/15)

---

Paul Skip Laisure, New York, NY (Anna Kou of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Seth M. Lieberman of counsel; Ruby D. Andrade on the memorandum), for respondent.

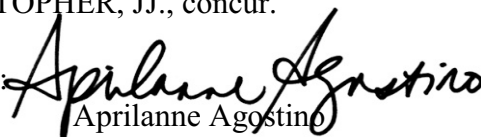
Appeal by the defendant, as limited by his motion, from a sentence of the Supreme Court, Kings County (Martin P. Murphy, J.), imposed September 7, 2016, upon his plea of guilty, on the ground that the sentence was excessive.

ORDERED that the sentence is affirmed.

The record of the plea proceeding does not demonstrate that the defendant knowingly, voluntarily, and intelligently waived his right to appeal. The Supreme Court, in its waiver colloquy, suggested that the waiver of the right to appeal was mandatory. Further, the court failed to establish on the record that the defendant read and understood the written waiver, or discussed the written waiver with his counsel. Accordingly, the purported waiver of the defendant's right to appeal is not enforceable (*see People v Johnson*, 157 AD3d 964; *People v Simon*, 153 AD3d 1435; *People v Colon*, 153 AD3d 550; *People v Head*, 147 AD3d 1083; *People v Bynum*, 142 AD3d 1183; *People v Burnett-Hicks*, 133 AD3d 773).

Nevertheless, 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

December 19, 2018

PEOPLE v FITZHUGH, FREDDY