

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**624**

**KA 08-02379**

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

VARNER HARRIS, JR., DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (TIMOTHY P. MURPHY OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (Penny M. Wolfgang, J.), rendered November 19, 2007. The judgment convicted defendant, upon his plea of guilty, of attempted murder in the first degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of two counts of attempted murder in the first degree (Penal Law §§ 110.00, 125.27 [1] [a] [i]; [b]) in connection with the shooting of two police officers. Even assuming, arguendo, that we agree with defendant that his waiver of the right to appeal was not knowingly, voluntarily and intelligently entered (*see People v Lopez*, 6 NY3d 248, 256), and thus that it does not encompass his contention that Supreme Court erred in refusing to suppress his statements to the police (*see People v Littleton*, 62 AD3d 1267, 1268, *lv denied* 12 NY3d 926), we nevertheless reject that contention. The court properly determined that "[t]he People met 'their initial burden of establishing the legality of the police conduct and defendant's waiver of rights,' and defendant failed to establish that he did not waive those rights, or that the waiver was not knowing, voluntary and intelligent" (*People v Grady*, 6 AD3d 1149, 1150, *lv denied* 3 NY3d 641). The sentence is not unduly harsh or severe.

Entered: April 30, 2010

Patricia L. Morgan  
Clerk of the Court