

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

709

**KA 16-01081**

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND WINSLOW, JJ.

---

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RASHAWN C. AUSTIN, DEFENDANT-APPELLANT.

---

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ALAN WILLIAMS OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DANIEL PUNCH OF COUNSEL), FOR RESPONDENT.

---

Appeal from a judgment of the Erie County Court (Kenneth F. Case, J.), rendered January 6, 2016. The judgment convicted defendant, upon his plea of guilty, of manslaughter in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his guilty plea of manslaughter in the first degree (Penal Law § 125.20 [1]). We reject defendant's contention that County Court erred in failing to fulfill its statutory obligation to consider whether the circumstances warranted youthful offender treatment (see CPL 720.20 [1]; *People v Rudolph*, 21 NY3d 497, 499 [2013]). At sentencing, the court denied defendant youthful offender treatment, and attributed the denial to the seriousness of the crime. We conclude that the court's remarks establish that it "made an independent determination" whether to adjudicate defendant a youthful offender (*People v Richardson*, 128 AD3d 988, 989 [2d Dept 2015], *lv denied* 25 NY3d 1206 [2015]). Defendant's valid waiver of the right to appeal encompasses his challenge to the severity of the sentence, including the period of postrelease supervision (see *People v Blas*, 120 AD3d 585, 585 [2d Dept 2014], *lv denied* 24 NY3d 1001 [2014]).

Entered: June 8, 2018

Mark W. Bennett  
Clerk of the Court