

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

**144**

**KA 18-00171**

PRESENT: WHALEN, P.J., CURRAN, TROUTMAN, WINSLOW, AND BANNISTER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GERALD BROWN, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (SARA A. GOLDFARB OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER, JR., OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Thomas J. Miller, J.), rendered June 5, 2017. The judgment convicted defendant upon his plea of guilty of criminal possession of a weapon in the second degree.

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 criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). We agree with defendant that he did not validly waive his right to appeal because County Court's oral colloquy "utterly 'mischaracterized the nature of the right' " to appeal (*People v Thomas*, – NY3d –, –, 2019 NY Slip Op 08545, \*6 [2019]), inasmuch as "the court's advisement as to the rights relinquished [by defendant] was incorrect and irredeemable under the circumstances" (*id.* at –, 2019 NY Slip Op 08545, \*5). Specifically, the court erroneously informed defendant that, by waiving the right to appeal, he could obtain no further review of the conviction or sentence by a higher court—crucially omitting any mention of the several rights that survive the waiver of the right to appeal (*see id.* at –, 2019 NY Slip Op 08545, \*6-7). Thus, the colloquy was insufficient to ensure that the waiver was voluntary, knowing, and intelligent (*see id.* at –, 2019 NY Slip Op 08545, \*6-7). Nevertheless, we conclude that the sentence is not unduly harsh or severe.

Entered: February 7, 2020

Mark W. Bennett  
Clerk of the Court