

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

1077

KA 18-00757

PRESENT: SMITH, J.P., CARNI, LINDLEY, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARION THOMPSON, DEFENDANT-APPELLANT.

CARA A. WALDMAN, FAIRPORT, FOR DEFENDANT-APPELLANT.

TODD J. CASELLA, DISTRICT ATTORNEY, PENN YAN (R. MICHAEL TANTILLO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Yates County Court (Jason L. Cook, J.), rendered December 5, 2017. The judgment convicted defendant upon his plea of guilty of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a plea of guilty of, inter alia, criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]). Contrary to defendant's contention, County Court "adequately apprised defendant that 'the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty' " (*People v Saddler*, 155 AD3d 1679, 1680 [4th Dept 2017], *lv denied* 30 NY3d 1108 [2018], quoting *People v Lopez*, 6 NY3d 248, 256 [2006]). Defendant's waiver of the right to appeal encompasses his challenge to the severity of his sentence (*see Lopez*, 6 NY3d at 255-256).

Entered: February 7, 2020

Mark W. Bennett
Clerk of the Court