

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

470

**KA 19-01635**

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, LINDLEY, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KADESHA MAYE, DEFENDANT-APPELLANT.

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KATHLEEN E. CASEY, BARKER, FOR DEFENDANT-APPELLANT.

CAROLINE A. WOJTASZEK, DISTRICT ATTORNEY, LOCKPORT (LAURA T. JORDAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered April 29, 2019. The judgment convicted defendant, upon a plea of guilty, of assault in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting her, upon her plea of guilty, of assault in the second degree (Penal Law § 120.05 [2]). We note at the outset that defendant's "release to parole supervision does not render [her] challenge to the severity of [her] sentence moot inasmuch as [she] remains under the control of the Parole Board until [her] sentence has terminated" (*People v Paul*, 139 AD3d 1383, 1384 [4th Dept 2016], *lv denied* 28 NY3d 973 [2016]). Nonetheless, even assuming, arguendo, that defendant's waiver of the right to appeal is invalid (*see People v Thomas*, 34 NY3d 545, 564-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Johnson*, 191 AD3d 1379, 1379 [4th Dept 2021]) and thus does not preclude our review of her challenge to the severity of her sentence (*see People v Alls*, 187 AD3d 1515, 1515 [4th Dept 2020]), we conclude that the sentence is not unduly harsh or severe.

Entered: May 7, 2021

Mark W. Bennett  
Clerk of the Court