

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

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KA 21-00703

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHANCE J. BARNWELL-MCCLARY, ALSO KNOWN AS CHANCE
BARNWELL-MCCLARY, ALSO KNOWN AS CHANCE JEMIL
BARNWELL-MCCLARY, ALSO KNOWN AS CHANCE B. MCCLARY,
DEFENDANT-APPELLANT.

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

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (ROBERT J. SHOEMAKER OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Charles N. Zambito, J.), rendered February 8, 2021. The judgment convicted defendant upon a plea of guilty of attempted criminal possession of a controlled substance in the third degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of attempted criminal possession of a controlled substance in the third degree (Penal Law §§ 110.00, 220.16 [1]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. "Even assuming, arguendo, that defendant's waiver of the right to appeal was not knowingly, voluntarily and intelligently entered" (*People v Plantiko*, 163 AD3d 1471, 1471 [4th Dept 2018]), we perceive no basis in the record to exercise our power to modify the sentence as a matter of discretion in the interest of justice (see CPL 470.15 [6] [b]), especially considering that defendant has already been released to parole supervision (see *People v Alls*, 187 AD3d 1515, 1515 [4th Dept 2020]).

Entered: October 7, 2022

Ann Dillon Flynn
Clerk of the Court