

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

400

KA 21-01064

PRESENT: SMITH, J.P., CURRAN, MONTOUR, NOWAK, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

IVAN GILBERT, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ERIN A. TRESMOND OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. MCHALE OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (James F. Bargnesi, J.), rendered June 29, 2021. The judgment convicted defendant, upon a guilty plea, of attempted murder 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 attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]). Contrary to defendant's contention, we conclude on this record that defendant's waiver of the right to appeal was knowing, voluntary, and intelligent (*see People v Hawkins*, 224 AD3d 1219, 1219 [4th Dept 2024]; *see also People v Rowell*, 224 AD3d 1335, 1335 [4th Dept 2024], *lv denied* 41 NY3d 985 [2024]; *People v Roberto*, 224 AD3d 1367, 1367 [4th Dept 2024]; *see generally People v Thomas*, 34 NY3d 545, 559-564 [2019], *cert denied – US –*, 140 S Ct 2634 [2020]). Defendant's valid waiver of the right to appeal precludes our review of his challenge to the severity of his sentence (*see People v Lopez*, 6 NY3d 248, 255-256 [2006]).

Entered: June 14, 2024

Ann Dillon Flynn
Clerk of the Court