

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

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**KA 21-01028**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ZAKKEE NAFI, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. KEANE, ACTING DISTRICT ATTORNEY, BUFFALO (HARMONY A. HEALY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (Paul Wojtaszek, J.), rendered July 12, 2021. The judgment convicted defendant, upon a guilty plea, 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 guilty plea, of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid (see *People v Vilella*, 213 AD3d 1282, 1283 [4th Dept 2023], *lv denied* 39 NY3d 1157 [2023]; *People v Hemphill*, 192 AD3d 1479, 1480 [4th Dept 2021]; see generally *People v Thomas*, 34 NY3d 545, 564-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]) and thus does not preclude our review of his challenge to his sentence, we conclude that the sentence is not unduly harsh or severe.

Entered: June 14, 2024

Ann Dillon Flynn  
Clerk of the Court