

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

785

KA 12-01052

PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, WHALEN, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TEARA FATICO, DEFENDANT-APPELLANT.

DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (JOSEPH G. FRAZIER OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (LAURA T. BITTNER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered February 2, 2012. The judgment convicted defendant, upon her plea of guilty, of attempted burglary in the first degree.

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

Memorandum: On appeal from a judgment convicting her, upon her plea of guilty, of attempted burglary in the first degree (Penal Law §§ 110.00, 140.30 [2]), defendant contends that her waiver of the right to appeal is unenforceable and that her sentence is unduly harsh and severe. Contrary to defendant's contention, County Court, during the plea colloquy, did not conflate the waiver of the right to appeal with those rights automatically forfeited by the plea (*see People v Richards*, 93 AD3d 1240, 1240, *lv denied* 20 NY3d 1014), and we conclude that her waiver of the right to appeal was otherwise knowingly, voluntarily, and intelligently entered (*see People v Lopez*, 6 NY3d 248, 256; *People v Pratt*, 77 AD3d 1337, 1337, *lv denied* 15 NY3d 955). Defendant's valid waiver of the right to appeal encompasses her challenge to the severity of the sentence (*see Lopez*, 6 NY3d at 255-256; *People v Strickland*, 103 AD3d 1178, 1178).

Entered: July 19, 2013

Frances E. Cafarell
Clerk of the Court