

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

1093

KA 14-02215

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GARY L. CARR, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KRISTIN M. PREVE OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. FLAHERTY, JR., ACTING DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (M. William Boller, A.J.), rendered November 26, 2014. The judgment convicted defendant, upon his plea of guilty, of attempted assault in the first 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 assault in the first degree (Penal Law §§ 110.00, 120.10 [1]). Contrary to defendant's contention, his waiver of the right to appeal "was not rendered invalid based on [Supreme Court]'s failure to require defendant to articulate the waiver in his own words" (*People v Dozier*, 59 AD3d 987, 987, *lv denied* 12 NY3d 815; *cf. People v Ramos*, 152 AD2d 209, 211-212), and defendant's "responses during the plea colloquy and his execution of a written waiver of the right to appeal establish that he intelligently, knowingly, and voluntarily waived his right to appeal" (*People v Rumsey*, 105 AD3d 1448, 1449, *lv denied* 21 NY3d 1019; see generally *People v Sanders*, 25 NY3d 337, 340-341). The valid waiver of the right to appeal encompasses defendant's challenge to the severity of the sentence (see *People v Lopez*, 6 NY3d 248, 256).

Entered: December 23, 2016

Frances E. Cafarell
Clerk of the Court