

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

689

KA 17-01201

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, DEJOSEPH, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

OTIS B. TILFORD, DEFENDANT-APPELLANT.

DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (THERESA L. PREZIOSO OF COUNSEL), FOR DEFENDANT-APPELLANT.

CAROLINE A. WOJTASZEK, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Niagara County (Richard C. Kloch, Sr., A.J.), rendered June 12, 2017. The judgment convicted defendant, upon his plea of guilty, of attempted arson in the second 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 arson in the second degree (Penal Law §§ 110.00, 150.15), defendant contends that his waiver of the right to appeal is invalid. We reject that contention. Supreme Court " 'did not improperly conflate the waiver of the right to appeal with those rights automatically forfeited by a guilty plea' " (*People v Mills*, 151 AD3d 1744, 1745 [4th Dept 2017], *lv denied* 29 NY3d 1131 [2017]; see *People v Tabb*, 81 AD3d 1322, 1322 [4th Dept 2011], *lv denied* 16 NY3d 900 [2011]). Defendant's valid waiver of the right to appeal encompasses his challenge to the severity of the sentence (see *Mills*, 151 AD3d at 1745).

Entered: June 8, 2018

Mark W. Bennett
Clerk of the Court