

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

1057

KA 19-02222

PRESENT: PERADOTTO, J.P., CARNI, NEMOYER, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIAM A. CAULEY, DEFENDANT-APPELLANT.

NICHOLAS B. ROBINSON, PUBLIC DEFENDER, LOCKPORT (JOSEPH G. FRAZIER OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Niagara County Court (Sara Sheldon, J.), rendered September 9, 2019. The judgment convicted defendant, upon his plea of guilty, of attempted burglary 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 burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]), defendant contends that his purported waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. Even assuming, arguendo, that the waiver is invalid and thus does not preclude our review of defendant's challenge to the severity of his sentence, we conclude that there is no basis for the exercise of our authority to reduce the sentence as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [b]) because County Court imposed the minimum sentence authorized for a second felony offender convicted of a class D violent felony (*see* Penal Law §§ 60.05 [6]; 70.00 [6]; 70.02 [1] [b], [c]; 70.06 [6] [c]; 70.45 [2]; 140.25 [2]; *People v Davis*, 159 AD3d 1586, 1587 [4th Dept 2018], *lv denied* 31 NY3d 1080 [2018]; *People v Barber*, 106 AD3d 1533, 1533-1534 [4th Dept 2013]).

Entered: November 13, 2020

Mark W. Bennett
Clerk of the Court