

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

**406**

**KA 19-01737**

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND BANNISTER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LEON THOMAS, DEFENDANT-APPELLANT.

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GREEN & BRENNECK, SYRACUSE (MELISSA K. SWARTZ OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER,  
JR., OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Thomas J. Miller, J.), rendered May 14, 2019. The judgment convicted defendant, upon a plea of guilty, of attempted murder in the second degree (two counts).

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 two counts of attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]). The People correctly concede that defendant did not validly waive his right to appeal (see *People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]). Contrary to defendant's contention, however, the sentence is not unduly harsh or severe. In that regard, we note that any psychosis or other mental disturbance that defendant was experiencing during the underlying criminal episode was induced by his voluntary ingestion of illegal drugs. Finally, we are "compelled to emphasize once again" that, contrary to the People's assertion, a criminal defendant need not show extraordinary circumstances or an abuse of discretion by the sentencing court in order to obtain a sentence reduction under CPL 470.15 (6) (b) (*People v Cutaia*, 167 AD3d 1534, 1535 [4th Dept 2018], *lv denied* 33 NY3d 947 [2019]).

Entered: May 7, 2021

Mark W. Bennett  
Clerk of the Court