

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

508

KA 18-01833

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JUAN LUIS-GARCIA, ALSO KNOWN AS INDIO,
DEFENDANT-APPELLANT.

JILL L. PAPERNO, ACTING PUBLIC DEFENDER, ROCHESTER (WILLIAM CLAUSS OF
COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (KAYLAN C. PORTER OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County
(Judith A. Sinclair, J.), rendered April 13, 2018. The judgment
convicted defendant, upon his plea of guilty, of manslaughter 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 manslaughter in the first degree (Penal
Law § 125.20 [1]). As defendant contends and the People correctly
concede, the record does not establish that defendant validly waived
his right to appeal. Here, the rights encompassed by defendant's
purported waiver of the right to appeal "were mischaracterized during
the oral colloquy and in [the] written form[] executed by defendant[],
which indicated the waiver was an absolute bar to direct appeal,
failed to signal that any issues survived the waiver and . . . advised
that the waiver encompassed 'collateral relief on certain nonwaivable
issues in both state and federal courts' " (*People v Bisoño*, 36 NY3d
1013, 1017-1018 [2020], quoting *People v Thomas*, 34 NY3d 545, 566
[2019], cert denied — US —, 140 S Ct 2634 [2020]; see *People v*
Fontanez-Baez, 195 AD3d 1448, 1449 [4th Dept 2021], lv denied 37 NY3d
971 [2021]). We conclude that defendant's purported waiver is not
enforceable inasmuch as the totality of the circumstances fails to
reveal that defendant "understood the nature of the appellate rights
being waived" (*Thomas*, 34 NY3d at 559; see *Fontanez-Baez*, 195 AD3d at
1449). Although we are thus not precluded from reviewing defendant's
challenge to the severity of his sentence (see *Fontanez-Baez*, 195 AD3d
at 1449), we nevertheless conclude that the sentence is not unduly

harsh or severe.

Entered: June 10, 2022

Ann Dillon Flynn
Clerk of the Court