

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

582

KA 21-00002

PRESENT: SMITH, J.P., LINDLEY, NEMOYER, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL CARR, DEFENDANT-APPELLANT.

RYAN JAMES MULDOON, AUBURN, FOR DEFENDANT-APPELLANT.

TODD J. CASELLA, DISTRICT ATTORNEY, PENN YAN, FOR RESPONDENT.

Appeal from a judgment of the Yates County Court (Jason L. Cook, J.), rendered October 27, 2020. The judgment convicted defendant upon a plea of guilty of burglary in the second degree and burglary in the third 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 burglary in the second degree (Penal Law § 140.25 [2]) and burglary in the third degree (§ 140.20), defendant contends that his waiver of the right to appeal is invalid and that the sentence is unduly harsh and severe. Contrary to defendant's contention, the record establishes that he knowingly, intelligently and voluntarily waived his right to appeal (*see generally People v Lopez*, 6 NY3d 248, 256 [2006]), and we note that County Court used the appropriate model colloquy with respect to the waiver of the right to appeal (*see generally People v Thomas*, 34 NY3d 545, 567 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Jeffords*, 185 AD3d 1417, 1417-1418 [4th Dept 2020], *lv denied* 35 NY3d 1095 [2020]). Further, the court inquired about defendant's asserted mental health issues, and those issues "did not invalidate the waiver of the right to appeal inasmuch as there was no showing that defendant was uninformed, confused or incompetent when he waived the right to appeal" (*People v Henderson*, 162 AD3d 1507, 1507 [4th Dept 2018], *lv denied* 32 NY3d 1004 [2018] [internal quotation marks omitted]; *see People v Brand*, 112 AD3d 1320, 1321 [4th Dept 2013], *lv denied* 23 NY3d 961 [2014]). The valid waiver of the right to appeal encompasses his challenge to the severity of the bargained-for sentence (*see People v Lococo*, 92 NY2d 825, 827 [1998]; *see also Lopez*, 6 NY3d at 255-256).

Entered: July 8, 2022

Ann Dillon Flynn
Clerk of the Court