

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

850

KA 20-00225

PRESENT: SMITH, J.P., PERADOTTO, CURRAN, WINSLOW, AND MONTOUR, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TYRONE ROMAINE, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MINDY F. VANLEUVAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Christopher J. Burns, J.), rendered December 18, 2018. The judgment convicted defendant, upon a plea of guilty, of attempted criminal possession of a weapon in the second degree and criminal possession of a weapon in the second degree (two counts).

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 one count of attempted criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]) and two counts of criminal possession of a weapon in the second degree (§ 265.03 [3]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid and therefore does not preclude our review of his challenge to the severity of his sentence (*see People v Lopez*, 196 AD3d 1157, 1157 [4th Dept 2021], *lv denied* 37 NY3d 1028 [2021]), we conclude that the sentence is not unduly harsh or severe.

Entered: November 18, 2022

Ann Dillon Flynn
Clerk of the Court