

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

294

KA 22-00853

PRESENT: SMITH, J.P., CURRAN, BANNISTER, GREENWOOD, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JASON LOOMIS, DEFENDANT-APPELLANT.

TODD G. MONAHAN, LITTLE FALLS, FOR DEFENDANT-APPELLANT.

KRISTYNA S. MILLS, DISTRICT ATTORNEY, WATERTOWN (MORGAN R. MAYER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Jefferson County Court (Daniel R. King, A.J.), rendered July 29, 2020. The judgment convicted defendant upon a guilty plea of criminal sexual act 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 guilty plea of two counts of criminal sexual act in the second degree (Penal Law § 130.45 [1]), defendant contends that the enhanced sentence is unduly harsh and severe. Even assuming, arguendo, that defendant's waiver of the right to appeal was not knowingly, voluntarily and intelligently entered (*see People v Fox*, 204 AD3d 1452, 1453-1454 [4th Dept 2022], *lv denied* 39 NY3d 940 [2022]; *see generally People v Thomas*, 34 NY3d 545, 562 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]) or otherwise does not encompass his challenge to the severity of the sentence (*see People v Tennant*, 217 AD3d 1564, 1564 [4th Dept 2023]; *People v Baker*, 204 AD3d 1471, 1471 [4th Dept 2022], *lv denied* 38 NY3d 1069 [2022]), we perceive no basis in the record to exercise our power to modify the sentence as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [b]*).

Entered: May 3, 2024

Ann Dillon Flynn
Clerk of the Court