

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

1028

KA 10-01264

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DANIEL UFARES, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (KRISTEN MCDERMOTT OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (MARIA MALDONADO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (William D. Walsh, J.), rendered February 18, 2010. The judgment convicted defendant, upon his plea of guilty, of robbery in the second 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 robbery in the second degree (Penal Law § 160.10 [2] [b]), defendant contends that his purported 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 unenforceable because County Court, during the plea colloquy, conflated the right to appeal with the rights automatically forfeited upon the plea of guilty (*see People v Sanborn*, 107 AD3d 1457, 1458), we nevertheless reject defendant's challenge to the severity of the sentence. The record establishes that defendant has six prior felony convictions, including three for robbery, and that he was on parole when he committed the instant robbery. In addition, pursuant to the plea agreement, the People agreed not to seek persistent felony offender status for defendant, and defendant was not prosecuted in federal court, where he faced a more severe sentence.

Entered: November 8, 2013

Frances E. Cafarell
Clerk of the Court