

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

1268

KA 13-00055

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STEVEN TALLEY, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (DONNA A. MILLING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Gerald J. Whalen, J.), rendered July 11, 2011. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a controlled substance in the fourth 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 attempted criminal possession of a controlled substance in the fourth degree (Penal Law §§ 110.00, 220.09 [1]), defendant contends that his waiver of the right to appeal is unenforceable and that his sentence is unduly harsh and severe. The record demonstrates, however, that Supreme Court "engage[d] the defendant in an adequate colloquy to ensure that the waiver of the right to appeal was a knowing and voluntary choice" (*People v Burt*, 101 AD3d 1729, 1730, *lv denied* 20 NY3d 1060 [internal quotation marks omitted]), and that defendant also signed a written waiver of the right to appeal (*see People v Pulley*, 107 AD3d 1560, 1561, *lv denied* 21 NY3d 1076). We thus conclude that the waiver is enforceable and that defendant is thereby foreclosed from challenging the severity of his sentence (*see People v Lopez*, 6 NY3d 248, 256; *People v Suttles*, 107 AD3d 1467, 1468, *lv denied* 21 NY3d 1046).

Entered: December 27, 2013

Frances E. Cafarell
Clerk of the Court