

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

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KA 12-00705

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

V

MEMORANDUM AND ORDER

ANTHONY BROWN, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (VINCENT F. GUGINO 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 (Deborah A. Haendiges, J.), rendered January 9, 2012. The judgment convicted defendant, upon his plea of guilty, of attempted assault 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 guilty plea, of attempted assault in the second degree (Penal Law §§ 110.00, 120.05 [2]), defendant contends that his waiver of the right to appeal does not encompass his challenge to the severity of his sentence, and that the sentence is unduly harsh and severe. The People correctly concede that the waiver of the right to appeal does not preclude defendant from challenging his sentence inasmuch as Supreme Court "failed to advise defendant of the potential periods of incarceration or the potential maximum term of incarceration" (*People v Ravarini*, 96 AD3d 1700, 1701, *lv denied* 20 NY3d 1014; *see People v Kelly*, 96 AD3d 1700, 1700). Nevertheless, we reject defendant's challenge. We note in particular that the court sentenced defendant to less than the maximum permitted by law, and defendant has already been released to parole supervision. In addition, defendant has 10 prior criminal convictions, two of which are for felonies, and he showed no remorse for his conduct.

Entered: February 14, 2014

Frances E. Cafarell
Clerk of the Court