

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

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KA 12-01525

PRESENT: SMITH, J.P., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAYME I. FRONTUTO, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BARBARA J. DAVIES OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered June 5, 2012. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree and unlawful possession of marihuana.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) and unlawful possession of marihuana (§ 221.05). As the People correctly concede, because “[n]o mention of youthful offender status was made before defendant waived his right to appeal during the plea colloquy” (*People v Anderson*, 90 AD3d 1475, 1476, *lv denied* 18 NY3d 991), defendant’s waiver of the right to appeal does not encompass his contention regarding County Court’s denial of his request for youthful offender status. We nevertheless reject defendant’s contention that the court abused its discretion in denying that request (*see People v Lugo*, 87 AD3d 1403, 1405, *lv denied* 18 NY3d 860). The remedial measures of *People v Rudolph* (21 NY3d 497, 499) do not apply to the circumstances of this case.

Entered: February 14, 2014

Frances E. Cafarell
Clerk of the Court