

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

1004

KA 13-01190

PRESENT: CENTRA, J.P., FAHEY, WHALEN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JARAD R. MATSULAVAGE, DEFENDANT-APPELLANT.

KATHLEEN A. KUGLER, CONFLICT DEFENDER, LOCKPORT (EDWARD P. PERLMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (LAURA T. BITTNER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered June 4, 2013. The judgment convicted defendant, upon his plea of guilty, of criminal sexual act in the second degree.

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 sexual act in the second degree (Penal Law § 130.45 [1]). Although defendant knowingly, intelligently, and voluntarily waived his right to appeal (see *People v Lopez*, 6 NY3d 248, 256), that waiver does not encompass the denial of his request for youthful offender status because no mention of youthful offender status was made before defendant waived his right to appeal (see *People v Anderson*, 90 AD3d 1475, 1475-1476, lv denied 18 NY3d 991). We conclude, however, that County Court did not abuse its discretion in refusing to grant defendant youthful offender status (see *People v Frontuto*, 114 AD3d 1271, 1271, lv denied ___ NY3d ___ [July 21, 2014]; *People v Mix*, 111 AD3d 1417, 1418; *People v Guppy*, 92 AD3d 1243, 1243, lv denied 19 NY3d 961), and we decline to exercise our interest of justice jurisdiction to adjudicate defendant a youthful offender (see *Guppy*, 92 AD3d at 1243). Defendant's waiver of the right to appeal encompasses his challenge to the severity of the sentence (see *People v Hidalgo*, 91 NY2d 733, 737).

Entered: October 3, 2014

Frances E. Cafarell
Clerk of the Court