

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

1400

KA 13-01548

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMAHL A. THOMAS, II, DEFENDANT-APPELLANT.

WILLIAMS, HEINL, MOODY & BUSCHMAN, P.C., AUBURN (RYAN JAMES MULDOON OF COUNSEL), FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Mark H. Fandrich, A.J.), rendered June 25, 2013. The judgment convicted defendant, upon his plea of guilty, of robbery in the first 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 robbery in the first degree (Penal Law § 160.15 [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, 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 Johnson*, 109 AD3d 1191, 1191-1192, *lv denied* 22 NY3d 997; *People v Davis*, 84 AD3d 1710, 1710, *lv denied* 17 NY3d 815), and we decline to exercise our interest of justice jurisdiction to adjudicate defendant a youthful offender (*cf. People v Noel*, 106 AD2d 854, 854-855).

Entered: January 2, 2015

Frances E. Cafarell
Clerk of the Court