

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

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KA 14-00058

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEVIN L. ABERNATHY, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KAREN C. RUSSO-MCLAUGHLIN 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 (Michael L. D'Amico, J.), rendered October 9, 2013. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon 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 guilty plea of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Contrary to the contention of defendant, the record establishes that his waiver of the right to appeal was knowingly, intelligently and voluntarily entered (see *People v Lopez*, 6 NY3d 248, 256). County Court thoroughly reviewed the consequences of the waiver with defendant, after which defendant indicated that he understood those consequences and orally waived his right to appeal (see *People v Peterson*, 35 AD3d 1195, 1196, lv denied 8 NY3d 926). Defendant's challenge to the factual sufficiency of the plea allocution is encompassed by his valid waiver of the right to appeal (see *People v Rosado*, 70 AD3d 1315, 1316, lv denied 14 NY3d 892).

Entered: February 5, 2016

Frances E. Cafarell
Clerk of the Court