

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

507

**KA 12-02098**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MATTHEW ALLEN, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LEAH R. MERVINE OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Vincent M. Dinolfo, J.), rendered September 27, 2012. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the third 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 sale of a controlled substance in the third degree (Penal Law § 220.39 [1]). As the People correctly concede, defendant did not knowingly, voluntarily, and intelligently waive his right to appeal. "Despite the existence of a written appeal waiver form signed by defendant and his attorney, no questions were asked of defendant about the appeal waiver and his understanding thereof" (*People v Frysinger*, 111 AD3d 1397, 1398; see *People v Briglin*, 125 AD3d 1518, 1518-1519, lv denied 26 NY3d 926). The sentence is not unduly harsh or severe.

Entered: June 10, 2016

Frances E. Cafarell  
Clerk of the Court