

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

1181

KA 15-00645

PRESENT: CENTRA, J.P., CARNI, NEMOYER, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSHUA D. MCCARTHY, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

DAVISON LAW OFFICE PLLC, CANANDAIGUA (MARY P. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

DONALD G. O'GEEN, DISTRICT ATTORNEY, WARSAW (VINCENT A. HEMMING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered December 4, 2014. The judgment convicted defendant, upon his plea of guilty, of aggravated criminal contempt, menacing a police officer or peace officer, and attempted aggravated assault upon a police officer or a peace officer.

It is hereby ORDERED that said appeal from the judgment insofar as it imposed sentence on the conviction of menacing a police officer or peace officer is unanimously dismissed and the judgment is affirmed.

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of aggravated criminal contempt (Penal Law § 215.52), menacing a police officer or peace officer (§ 120.18), and attempted aggravated assault upon a police officer or a peace officer (§§ 110.00, 120.11) and, in appeal No. 2, he appeals from the resentence imposed on the conviction of menacing a police officer or peace officer. Contrary to defendant's contention in appeal No. 1, the record establishes that he knowingly, voluntarily, and intelligently waived the right to appeal (*see generally People v Lopez*, 6 NY3d 248, 256), and that valid waiver forecloses any challenge by defendant to the severity of the sentence and resentence (*see id.* at 255; *see generally People v Lococo*, 92 NY2d 825, 827; *People v Hidalgo*, 91 NY2d 733, 737).

Entered: December 23, 2016

Frances E. Cafarell
Clerk of the Court