

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

**266**

**KA 15-00565**

PRESENT: PERADOTTO, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND TROUTMAN,

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DENNIS J. CALKINS, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (TIMOTHY P. MURPHY OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered January 5, 2015. The judgment convicted defendant, upon his plea of guilty, of unlawful manufacture of methamphetamine in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon a plea of guilty of unlawful manufacture of methamphetamine in the third degree (Penal Law § 220.73 [1]), defendant contends that his waiver of the right to appeal is unenforceable and that his sentence is unduly harsh and severe. As the People correctly concede, the record is devoid of a valid waiver of the right to appeal. Although the prosecutor stated during the plea proceeding that a waiver of the right to appeal was a part of the plea agreement, County Court did not engage in any colloquy with defendant concerning the waiver of the right to appeal and thus failed to ensure that there was a knowing, intelligent and voluntary waiver of that right (*see generally People v Lopez*, 6 NY3d 248, 257). Nevertheless, we conclude that the sentence is not unduly harsh or severe.

Entered: March 24, 2017

Frances E. Cafarell  
Clerk of the Court