

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

704

KA 15-02164

PRESENT: SMITH, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DYLAN J. SIMONS, DEFENDANT-APPELLANT.

DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (THERESA L. PREZIOSO OF COUNSEL), FOR DEFENDANT-APPELLANT.

THEODORE A. BRENNER, DEPUTY DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered October 26, 2015. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the fourth 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 possession of a controlled substance in the fourth degree (Penal Law § 220.09 [1]). Initially, we agree with defendant that his waiver of the right to appeal does not encompass his challenge to the severity of the sentence and thus does not foreclose our review of that challenge (*see People v Maracle*, 19 NY3d 925, 927-928; *People v Tomeno*, 141 AD3d 1120, 1120-1121, *lv denied* 28 NY3d 974). Nevertheless, we conclude that the sentence is not unduly harsh or severe.

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court