

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

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KA 16-00920

PRESENT: CENTRA, J.P., DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES DIMON, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (SARA A. GOLDFARB OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (James H. Cecile, A.J.), rendered January 6, 2015. The judgment convicted defendant, upon his plea of guilty, of burglary in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice by reducing the sentence imposed to an indeterminate term of imprisonment of 1 to 3 years and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of burglary in the third degree (Penal Law § 140.20). Preliminarily, we agree with defendant that he did not validly waive his right to appeal (see *People v Eliofoff*, 152 AD3d 1158, 1159 [4th Dept 2017], *lv denied* 29 NY3d 1126 [2017]; *People v Homer*, 151 AD3d 1949, 1949 [4th Dept 2017], *lv denied* 30 NY3d 950 [2017]). We further agree with defendant that the 2-to-6-year term of imprisonment imposed by County Court is unduly harsh and severe, and we therefore modify the judgment as a matter of discretion in the interest of justice by reducing the sentence to a term of imprisonment of 1 to 3 years (see generally *People v Meacham*, 151 AD3d 1666, 1670 [4th Dept 2017], *lv denied* 30 NY3d 981 [2017]).

Entered: May 4, 2018

Mark W. Bennett
Clerk of the Court