

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

153

**KA 17-02223**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KAYLA M. DAMON, DEFENDANT-APPELLANT.

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

CAROLINE A. WOJTASZEK, DISTRICT ATTORNEY, LOCKPORT (MARY-JEAN BOWMAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered November 20, 2017. The judgment convicted defendant, upon her plea of guilty, of rape in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting her, upon her plea of guilty, of rape in the second degree (Penal Law § 130.30 [1]). Defendant validly waived her right to appeal, and that waiver forecloses her challenge to the severity of her sentence (see *People v Alfieri*, 156 AD3d 1445, 1445-1446 [4th Dept 2017], *lv denied* 31 NY3d 980 [2018]). Finally, we note that the "certificate of disposition" incorrectly states that County Court assessed only a \$325 "surcharge" at sentencing. In fact, the court assessed a \$300 mandatory surcharge, a \$50 DNA databank fee, a \$25 crime victim assistance fee, a \$50 sex offender registration fee, and a \$1,000 supplemental sex offender victim fee, and the certificate must be amended accordingly (see *People v Cutaia*, 167 AD3d 1534, 1536 [4th Dept 2018]).

Entered: February 1, 2019

Mark W. Bennett  
Clerk of the Court