

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

1406

KA 16-01000

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ASAD R. HIXON, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (RICHARD L. SULLIVAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (JULIE BENDER FISKE OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael F. Pietruszka, J.), rendered December 5, 2014. The judgment convicted defendant, upon his plea of guilty, of aggravated vehicular assault and assault in the third degree (three counts).

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 one count of aggravated vehicular assault (Penal Law § 120.04-a [4]) and three counts of assault in the third degree (§ 120.00 [2]). The record establishes that defendant knowingly, intelligently, and voluntarily waived his right to appeal and that he understood that the right to appeal is separate and distinct from the rights automatically forfeited by a guilty plea (see *People v Bryant*, 28 NY3d 1094, 1096 [2016]; *People v Blarr* [appeal No. 1], 149 AD3d 1606, 1606 [4th Dept 2017], *lv denied* 29 NY3d 1123 [2017]). The valid waiver of the right to appeal encompasses defendant's challenges to the factual sufficiency of the plea allocution and the severity of the sentence (see *People v Johnson*, 60 AD3d 1496, 1496 [4th Dept 2009], *lv denied* 12 NY3d 926 [2009]).

Entered: February 1, 2019

Mark W. Bennett
Clerk of the Court