

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

1195

KA 14-01414

PRESENT: CENTRA, J.P., CARNI, LINDLEY, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL A. COLON, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (BENJAMIN L. NELSON OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered September 3, 2013. The judgment convicted defendant upon his plea of guilty of criminal sexual act in the first degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of criminal sexual act in the first degree (Penal Law § 130.50 [3]), defendant contends that his waiver of the right to appeal is not valid. We agree inasmuch as "the purported waiver was obtained at sentencing, and there is no indication that Supreme Court obtained a knowing and voluntary waiver of that right at the time of the plea" (*People v Sims*, 129 AD3d 1509, 1510 [4th Dept 2015], lv denied 26 NY3d 935 [2015]). We nevertheless reject defendant's contention that his sentence is unduly harsh and severe.

Entered: December 20, 2019

Mark W. Bennett
Clerk of the Court