

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

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**KA 17-00729**

PRESENT: WHALEN, P.J., CARNI, BANNISTER, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEITH O. MORRISON, DEFENDANT-APPELLANT.

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CARA A. WALDMAN, FAIRPORT, FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA, FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Ontario County (Craig J. Doran, J.), rendered January 18, 2017. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree (two 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 criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]) and two counts of criminal possession of a controlled substance in the third degree (§ 220.16 [1]). Contrary to his contention and the People's incorrect concession (*see People v Berrios*, 28 NY2d 361, 366-367 [1971]; *People v Adair*, 177 AD3d 1357, 1357 [4th Dept 2019]), the record establishes that defendant knowingly, voluntarily and intelligently waived his right to appeal (*see People v Hoke*, 167 AD3d 1549, 1549-1550 [4th Dept 2018], *lv denied* 33 NY3d 949 [2019]; *People v Robinson*, 112 AD3d 1349, 1349 [4th Dept 2013], *lv denied* 23 NY3d 1042 [2014]). The valid waiver of the right to appeal encompasses defendant's challenge to the severity of his sentence (*see People v Lopez*, 6 NY3d 248, 255-256 [2006]).

Entered: January 31, 2020

Mark W. Bennett  
Clerk of the Court