

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

22

KA 18-01046

PRESENT: PERADOTTO, J.P., CARNI, CURRAN, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL BURGESS, DEFENDANT-APPELLANT.

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

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (ASHLEY R. LOWRY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered April 17, 2018. The judgment convicted defendant upon a plea of guilty of attempted burglary in the third 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 attempted burglary in the third degree (Penal Law §§ 110.00, 140.20), defendant contends that his waiver of the right to appeal is not valid, and he challenges the severity of the sentence. Although we agree with defendant that the waiver of the right to appeal is invalid (*see generally People v Hamilton*, 49 AD3d 1163, 1164 [4th Dept 2008]; *People v Brown*, 296 AD2d 860, 860 [4th Dept 2002], *lv denied* 98 NY2d 767 [2002]), we nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: February 7, 2020

Mark W. Bennett
Clerk of the Court