

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

280

**KA 19-00890**

PRESENT: SMITH, J.P., CENTRA, LINDLEY, CURRAN, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

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MEMORANDUM AND ORDER

CALVIN D. CROGAN, 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 (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Niagara County Court (Sara Sheldon, J.), rendered March 29, 2019. The judgment convicted defendant upon a plea of guilty of attempted assault in the first degree.

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 attempted assault in the first degree (Penal Law §§ 110.00, 120.10 [1]). We agree with defendant that he did not validly waive his right to appeal because County Court's oral colloquy "utterly 'mischaracterized the nature of the right' " to appeal (*People v Thomas*, – NY3d –, 2019 NY Slip Op 08545, \*6 [2019]), inasmuch as "the court's advisement as to the rights relinquished [by defendant] was incorrect and irredeemable under the circumstances" (*id.* at –, 2019 NY Slip Op 08545, \*5). Because the court provided defendant with erroneous information about the scope of the waiver of the right to appeal and failed to identify the several rights that would survive that waiver, we conclude that the colloquy was insufficient to ensure that the waiver was voluntary, knowing, and intelligent (*see id.* at –, 2019 NY Slip Op 08545, \*6-7). Nevertheless, we conclude that the sentence is not unduly harsh or severe.

Entered: March 13, 2020

Mark W. Bennett  
Clerk of the Court