

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

683

KA 19-01306

PRESENT: CENTRA, J.P., PERADOTTO, NEMOYER, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DEMETRIUS M. BAXTER, DEFENDANT-APPELLANT.

NICHOLAS B. ROBINSON, PUBLIC DEFENDER, LOCKPORT (JOSEPH G. FRAZIER OF COUNSEL), FOR DEFENDANT-APPELLANT.

CAROLINE A. WOJTASZEK, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Sara Sheldon, J.), rendered May 20, 2019. The judgment convicted defendant, upon his plea of guilty, of attempted robbery in the second 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 robbery in the second degree (Penal Law §§ 110.00, 160.10 [2] [b]). Preliminarily, we agree with defendant that his waiver of the right to appeal is invalid (see *People v Cole*, 181 AD3d 1329, 1330 [4th Dept 2020]). Nevertheless, defendant's contention that County Court failed to conduct a sufficient inquiry before terminating his interim probation is unpreserved for appellate review (see *People v Alsaaidi*, 173 AD3d 1836, 1837 [4th Dept 2019], *lv denied* 35 NY3d 940 [2020]; *People v Wissert*, 85 AD3d 1633, 1633-1634 [4th Dept 2011], *lv denied* 17 NY3d 956 [2011]), and we decline to exercise our power to review it as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]). Contrary to defendant's further contention, the sentence is not unduly harsh or severe.

Entered: July 17, 2020

Mark W. Bennett
Clerk of the Court