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

1248
KA 18-00591
PRESENT: SMITH, J.P., PERADOTTO, NEMOYER, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

KASEAN L. SHANNON, ALSO KNOWN AS KASEAN SHANNON,
DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JAMES M. SPECYAL OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (ROBERT J. SHOEMAKER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered July 17, 2015. The judgment convicted defendant upon his plea of guilty of sexual abuse in the first degree.

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

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of sexual abuse in the first degree (Penal Law § 130.65 [2]) and, in appeal No. 2, he appeals from a judgment convicting him upon his plea of guilty of, inter alia, attempted rape in the first degree (§§ 110.00, 130.35 [2]) and incest in the third degree (§ 255.25). As a preliminary matter, we note that the People correctly concede in both appeals that defendant's waiver of the right to appeal is invalid (*see People v Thomas*, 34 NY3d 545, 553-556, 565-566 [2019], *cert denied* — US —, 140 S Ct 2634 [2020]).

Contrary to defendant's contention in both appeals, County Court did not abuse its discretion in failing to order sua sponte a competency hearing pursuant to CPL 730.30 (1) during the sentencing proceeding. The fact that the presentence report reflected defendant's history of mental illness did not by itself call into question defendant's competence (*see People v Chapman*, 179 AD3d 1526, 1527 [4th Dept 2020], *lv denied* 35 NY3d 968 [2020]; *People v Duffy*, 119 AD3d 1231, 1233 [3d Dept 2014], *lv denied* 24 NY3d 1043 [2014], citing *People v Tortorici*, 92 NY2d 757, 765 [1999], *cert denied* 528 US 834 [1999]). Here, the court did not receive any "information which, objectively considered, should reasonably have raised a doubt about defendant's competency and alerted [it] to the possibility that defendant could neither understand the proceedings or appreciate their

significance, nor rationally aid his attorney in [the] defense" (*People v Winebrenner*, 96 AD3d 1615, 1616 [4th Dept 2012], *lv denied* 19 NY3d 1029 [2012] [internal quotation marks omitted]). The court therefore did not have " 'reasonable ground[s] . . . to believe that the defendant was an incapacitated person,' " and so it was "under no obligation to issue an order of examination" (*People v Morgan*, 87 NY2d 878, 880 [1995]).

Finally, we conclude that the sentence in each appeal is not unduly harsh or severe, particularly given that the court imposed concurrent sentences of incarceration, four of which were imposed for sexual crimes against four separate victims on four separate dates. Thus, we conclude that "[t]he mitigating factors that defendant proffers in his brief are unexceptional, and they are more than fully accounted for by the agreed-upon, midrange sentence imposed" by the court (*People v Wellington*, 158 AD3d 1269, 1269 [4th Dept 2018], *lv denied* 31 NY3d 1018 [2018]).

Entered: December 23, 2020

Mark W. Bennett
Clerk of the Court