

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

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KA 20-00589

PRESENT: PERADOTTO, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RA JONATHAN, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ALLYSON L. KEHL-WIERZBOWSKI 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 (Charles N. Zambito, J.), rendered December 14, 2018. The judgment revoked defendant's sentence of probation and imposed a sentence of imprisonment.

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 strangulation in the second degree (Penal Law § 121.12). In appeal No. 2, defendant appeals from a judgment revoking the sentence of probation previously imposed upon his conviction of strangulation in the second degree (§ 121.12) and imposing a determinate term of imprisonment, followed by a period of postrelease supervision. We note at the outset that we dismiss the appeal from the judgment in appeal No. 1 because defendant raises no contentions with respect thereto (*see People v White*, 173 AD3d 1852, 1852 [4th Dept 2019]; *People v Scholz*, 125 AD3d 1492, 1492 [4th Dept 2015], *lv denied* 25 NY3d 1077 [2015]).

Contrary to defendant's initial contention, the Court of Appeals has rejected the assertion that waivers of the right to appeal should be invalid *per se* (*see People v Thomas*, 34 NY3d 545, 557-558, 558 n 1 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Seaberg*, 74 NY2d 1, 8-9 [1989]). Even assuming, *arguendo*, that defendant's waiver of the right to appeal is invalid and therefore does not preclude our review of his challenge to the severity of his sentence (*see People v Viehdeffer*, 189 AD3d 2143, 2144 [4th Dept 2020]; *People v Love*, 181 AD3d 1193, 1193 [4th Dept 2020]), we conclude that the sentence is not

unduly harsh or severe.

Entered: March 19, 2021

Mark W. Bennett
Clerk of the Court