

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

562

KA 18-01874

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, CURRAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANGEL REYES, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (SHERRY A. CHASE OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DANIEL J. PUNCH OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (James F. Bargnesi, J.), rendered May 16, 2018. The judgment convicted defendant, upon a plea of guilty, of burglary in the third degree and criminal mischief in the fourth 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 burglary in the third degree (Penal Law § 140.20) and criminal mischief in the fourth degree (§ 145.00 [1]), defendant contends that his waiver of the right to appeal is unenforceable and that his felony conviction should be reduced to a misdemeanor because County Court abused its discretion in refusing to allow him to continue participating in the judicial diversion program following an arrest on new felony charges. Even assuming, *arguendo*, that defendant's waiver of the right to appeal is unenforceable (*see People v Love*, 181 AD3d 1193, 1193 [4th Dept 2020]), we perceive no abuse of discretion by the court (*see People v Secore*, 102 AD3d 1059, 1060 [3d Dept 2013], *lv denied* 21 NY3d 1019 [2013]). In any event, under these circumstances, there is no legal basis for us to reduce the felony conviction to a misdemeanor, as defendant requests.

Entered: July 16, 2021

Mark W. Bennett
Clerk of the Court