

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

819

KA 17-00399

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARRELL J. GRIFFIN, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DEREK HARNSBERGER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Victoria M. Argento, J.), rendered December 15, 2016. The judgment convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice by reducing the sentence imposed for criminal possession of a weapon in the second degree under count one of the indictment to a determinate term of imprisonment of six years and a period of postrelease supervision of 2½ years and by reducing the sentence imposed for criminal possession of a weapon in the third degree under count two of the indictment to an indeterminate term of imprisonment of 2 to 6 years and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of criminal possession of a weapon (CPW) in the second degree (Penal Law § 265.03 [3]) and CPW in the third degree (§ 265.02 [3]). Viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we reject defendant's contention that the verdict is against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). However, we agree with defendant that the sentence is unduly harsh and severe. Thus, as a matter of discretion in the interest of justice, we modify the judgment by reducing the sentence imposed for CPW in the second degree under count one of the indictment to a determinate term of imprisonment of six years and a period of postrelease supervision of 2½ years and by reducing the sentence imposed for CPW in the third degree under count two of the indictment to an indeterminate term of imprisonment of 2 to 6 years (*see CPL*

470.15 [6] [b]).

Entered: October 1, 2021

Ann Dillon Flynn
Clerk of the Court