

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

938

KA 17-00115

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TYRONE KING, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (BENJAMIN L. NELSON OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LEAH R. MERVINE OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered January 9, 2017. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree (two counts), strangulation in the second degree and criminal possession of a weapon in the third degree (two counts).

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 two counts of criminal possession of a weapon in the second degree (Penal Law § 265.03 [1] [b]; [3]), one count of strangulation in the second degree (§ 121.12), and two counts of criminal possession of a weapon in the third degree (§ 265.02 [1], [3]). As defendant contends and the People correctly concede, defendant did not validly waive his right to appeal (*see People v Bisono*, 36 NY3d 1013, 1017-1018 [2020]; *People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Johnson*, 192 AD3d 1494, 1495 [4th Dept 2021], *lv denied* 37 NY3d 965 [2021]). Although we are thus not precluded from reviewing defendant's challenge to the severity of his sentence (*see Johnson*, 192 AD3d at 1495), we nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: November 12, 2021

Ann Dillon Flynn
Clerk of the Court