

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

1033

KA 19-01046

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN M. GRABOWSKI, ALSO KNOWN AS JOHN MICHAEL GRABOWSKI, ALSO KNOWN AS JOHN GRABOWSKI, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JOHN J. MORRISSEY 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 April 26, 2019. The judgment convicted defendant, upon a plea of guilty, of rape in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him, upon his *Alford* plea of guilty, of rape in the first degree (Penal Law § 130.35 [4]). We agree with defendant that his "waiver of the right to appeal was invalid, because [it] encompassed post-conviction motions" (*People v Suarez-Montoya*, 183 AD3d 765, 765 [2d Dept 2020]; see *People v Byrd*, 181 AD3d 1183, 1184 [4th Dept 2020], *lv denied* 35 NY3d 1025 [2020]). The sentence, however, is not unduly harsh or severe. Defendant's contention that County Court improperly penalized him at sentencing for taking an *Alford* plea is unpreserved for appellate review (see generally *People v Hurley*, 75 NY2d 887, 888 [1990]). Finally, the certificate of conviction incorrectly states that defendant pleaded guilty on April 25, 2019, and it must therefore be amended to reflect the correct date of March 25, 2019.

Entered: December 23, 2021

Ann Dillon Flynn
Clerk of the Court