

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

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KA 18-01099

PRESENT: CENTRA, J.P., NEMOYER, CURRAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STEPHEN FRANCOIS, JR., DEFENDANT-APPELLANT.

LELAND D. MCCORMAC, III, INTERIM PUBLIC DEFENDER, UTICA (PATRICK J. MARTHAGE OF COUNSEL), FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Robert Bauer, J.), rendered December 18, 2017. The judgment convicted defendant, upon a plea of guilty, of attempted murder in the second degree.

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 attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]). Defendant's challenges to the voluntariness of his guilty plea are without merit (see *People v Ashley*, 71 AD3d 1286, 1287 [3d Dept 2010], *affd* 16 NY3d 725 [2011]; *People v Miller*, 126 AD3d 1233, 1234-1235 [3d Dept 2015], *lv denied* 25 NY3d 1168 [2015]; *People v Davis*, 37 AD3d 1179, 1180 [4th Dept 2007], *lv denied* 8 NY3d 983 [2007]). Moreover, although the People correctly concede that defendant did not validly waive his right to appeal (see *People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]), we conclude that the sentence is not unduly harsh or severe.

Entered: February 4, 2022

Ann Dillon Flynn
Clerk of the Court