

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

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KA 21-00635

PRESENT: SMITH, J.P., CENTRA, PERADOTTO, LINDLEY, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARRYL FORTNER, DEFENDANT-APPELLANT.  
(APPEAL NO. 1.)

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PIOTR BANASIAK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRADLEY W. OASTLER OF COUNSEL), FOR RESPONDENT.

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Appeal from a resentence of the Onondaga County Court (Matthew J. Doran, J.), rendered March 23, 2021. Defendant was resentenced upon a conviction of robbery in the first degree and menacing in the second degree.

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

Memorandum: In appeal No. 1, defendant appeals from a resentence on his conviction, upon his plea of guilty, of robbery in the first degree (Penal Law § 160.15 [4]) and menacing in the second degree (§ 120.14 [1]). In appeal No. 2, defendant appeals from a resentence on his conviction, upon his plea of guilty in the same plea proceeding, of attempted robbery in the first degree (§§ 110.00, 160.15 [4]). Although defendant validly waived his right to appeal at the plea proceeding (*see generally People v Lopez*, 6 NY3d 248, 256 [2006]), that waiver does not preclude him from challenging the sentences imposed upon resentencing (*see People v Allen*, 97 AD3d 1164, 1164 [4th Dept 2012], *lv denied* 19 NY3d 994 [2012]; *People v Gray*, 32 AD3d 1052, 1053 [3d Dept 2006], *lv denied* 7 NY3d 902 [2006]; *see also People v Jirdon*, 159 AD3d 1518, 1519 [4th Dept 2018]). We nevertheless conclude in each appeal that the resentence is not unduly harsh or severe.

Entered: March 18, 2022

Ann Dillon Flynn  
Clerk of the Court