

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

760

**KA 21-00472**

PRESENT: WHALEN, P.J., NEMOYER, CURRAN, BANNISTER, AND MONTOUR, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH BARBER, JR., DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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ANDREW D. CORREIA, PUBLIC DEFENDER, LYONS (BRIDGET L. FIELD OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

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Appeal from a judgment of the Wayne County Court (John B. Nesbitt, J.), rendered March 24, 2021. The judgment convicted defendant upon his plea of guilty of driving while ability impaired by drugs and criminal possession of a controlled substance in the third degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a guilty plea of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]) and driving while ability impaired by drugs as a class D felony (Vehicle and Traffic Law §§ 1192 [4]; 1193 [1] [c] [ii]). Defendant contends that his waiver of the right to appeal is invalid and that the sentence is unduly harsh and severe. Contrary to defendant's contention, the record establishes that he knowingly, intelligently and voluntarily waived his right to appeal (*see generally People v Lopez*, 6 NY3d 248, 256 [2006]), and we note that County Court used the appropriate model colloquy with respect to the waiver of the right to appeal (*see People v Carr*, 207 AD3d 1249, 1250 [4th Dept 2022], *lv denied* – NY3d – [Sept. 23, 2022]; *see generally People v Thomas*, 34 NY3d 545, 567 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]). The valid waiver of the right to appeal encompasses defendant's challenge to the severity of the bargained-for sentence (*see People v Lococo*, 92 NY2d 825, 827 [1998]; *see also Lopez*, 6 NY3d at 255-256).

Entered: November 10, 2022

Ann Dillon Flynn  
Clerk of the Court