

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

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**KA 19-01413**

PRESENT: WHALEN, P.J., SMITH, CURRAN, BANNISTER, AND OGDEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TREVOR MARTIN, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (SUSAN R. HUTCHISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (JERRY MARTI OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered May 23, 2019. The judgment convicted defendant upon a plea of guilty of criminal possession of a weapon in the second degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. We agree with defendant that the waiver of the right to appeal is invalid and therefore does not preclude our review of his challenge to the severity of his sentence (*see People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Gordon*, 191 AD3d 1367, 1368 [4th Dept 2021], *lv denied* 36 NY3d 1120 [2021]; *People v Clark*, 191 AD3d 1485, 1485 [4th Dept 2021], *lv denied* 37 NY3d 954 [2021]). Nevertheless, we conclude that the sentence is not unduly harsh or severe.

Entered: February 10, 2023

Ann Dillon Flynn  
Clerk of the Court