

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

465

KA 22-00049

PRESENT: PERADOTTO, J.P., BANNISTER, MONTOUR, AND GREENWOOD, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID W. FREE, JR., DEFENDANT-APPELLANT.

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KATHLEEN E. CASEY, BARKER, FOR DEFENDANT-APPELLANT.

BRIAN D. SEAMAN, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered December 13, 2021. The judgment convicted defendant upon a plea of guilty of attempted course of sexual conduct against a child in the first 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 attempted course of sexual conduct against a child in the first degree (Penal Law §§ 110.00, 130.75 [1] [b]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid and therefore does not preclude his challenge to the severity of the sentence (*see People v Terry*, 203 AD3d 1578, 1578 [4th Dept 2022], *lv denied* 38 NY3d 1010 [2022]), we perceive no basis in the record to exercise our power to modify the sentence as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [b]*).

Entered: June 9, 2023

Ann Dillon Flynn  
Clerk of the Court