

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

578

KA 19-01461

PRESENT: SMITH, J.P., LINDLEY, CURRAN, OGDEN, AND GREENWOOD, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN R. ALBANESE, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Stephen T. Miller, A.J.), rendered May 7, 2019. 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 guilty plea 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 negotiated sentence is unduly harsh and severe. Even assuming, *arguendo*, that defendant's waiver of the right to appeal is invalid, as the People concede, we perceive "no basis in the record to exercise our power to modify the negotiated sentence[] as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [b])" (*People v Baxter*, 204 AD3d 1440, 1441 [4th Dept 2022], *lv denied* 38 NY3d 1069 [2022]).

Entered: July 28, 2023

Ann Dillon Flynn
Clerk of the Court