

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

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KA 21-01539

PRESENT: LINDLEY, J.P., CURRAN, MONTOUR, GREENWOOD, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LAMAR CEPEDA, DEFENDANT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Onondaga County Court (Thomas J. Miller, J.), rendered October 1, 2021. The judgment convicted defendant upon his 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: Defendant appeals 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]). We affirm. Preliminarily, we agree with defendant that his waiver of the right to appeal is invalid (*see People v Pinet*, 201 AD3d 1370, 1370 [4th Dept 2022], *lv denied* 38 NY3d 953 [2022]; *People v Hussein*, 192 AD3d 1705, 1706 [4th Dept 2021], *lv denied* 37 NY3d 965 [2021]; *see generally People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]).

We conclude that County Court did not abuse its discretion in declining to adjudicate defendant a youthful offender (*see People v Simpson*, 182 AD3d 1046, 1047 [4th Dept 2020], *lv denied* 35 NY3d 1049 [2020]; *see generally People v Minemier*, 29 NY3d 414, 421 [2017]). In addition, having reviewed the applicable factors pertinent to a youthful offender determination (*see People v Keith B.J.*, 158 AD3d 1160, 1160 [4th Dept 2018]), we decline to exercise our interest of justice jurisdiction to grant him such status (*see Simpson*, 182 AD3d at 1047; *People v Shrubsall*, 167 AD2d 929, 930 [4th Dept 1990]; *cf. Keith B.J.*, 158 AD3d at 1161). Finally, contrary to defendant's contention, we conclude that the sentence is not unduly harsh or severe.

Entered: September 29, 2023

Ann Dillon Flynn
Clerk of the Court