

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

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KA 20-01133

PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, OGDEN, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RYAN F. RIOS, ALSO KNOWN AS RYAN RIOS, ALSO  
KNOWN AS RYAN FERNANDO RIOS, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BHAGYASHREE GUPTA OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

KEVIN T. FINNELL, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Genesee County Court (Charles N. Zambito, J.), rendered February 18, 2020. The judgment convicted defendant upon his plea of guilty of rape 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 rape in the second degree (Penal Law § 130.30 [1]). 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 Hoffman*, 191 AD3d 1262, 1263 [4th Dept 2021], *lv denied* 36 NY3d 1097 [2021]), we conclude that the sentence is not unduly harsh or severe.

Defendant also contends that his guilty plea was not knowing, voluntary, and intelligent because County Court failed to advise him of the possibility of civil confinement pursuant to the Sex Offender Management and Treatment Act (Mental Hygiene Law § 10.01 *et seq.*). Defendant failed to move to withdraw the plea or to vacate the judgment of conviction on that ground, however, and thus he failed to preserve his contention for our review (*see People v Colbert*, 84 AD3d 1755, 1755 [4th Dept 2011], *lv denied* 17 NY3d 815 [2011]; *see also People v Miller*, 166 AD3d 812, 813 [2d Dept 2018], *lv denied* 33 NY3d 951 [2019]). This case does not fall within the rare exception to the preservation requirement set forth in *People v Lopez* (71 NY2d 662, 666 [1988]).

Entered: February 2, 2024

Ann Dillon Flynn  
Clerk of the Court