

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

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**KA 21-01661**

PRESENT: WHALEN, P.J., LINDLEY, GREENWOOD, NOWAK, AND KEANE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSHUA P. RIVERA, DEFENDANT-APPELLANT.

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JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (JANE I. YOON OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL),  
FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Alex R. Renzi, J.), rendered August 17, 2021. The judgment convicted defendant, upon his plea of guilty, of burglary in the third degree.

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

Memorandum: Defendant appeals from a judgment convicting him, upon his guilty plea, of burglary in the third degree (Penal Law § 140.20). Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid (*see People v Fernandez*, 218 AD3d 1257, 1257-1258 [4th Dept 2023], *lv denied* 40 NY3d 1012 [2023]; *see generally People v Thomas*, 34 NY3d 545, 564-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]) and thus does not preclude our review of his challenge to his enhanced sentence (*see People v Johnson*, 215 AD3d 1282, 1282 [4th Dept 2023], *lv denied* 40 NY3d 929 [2023]), we nevertheless conclude that the enhanced sentence is not unduly harsh or severe.

Entered: March 22, 2024

Ann Dillon Flynn  
Clerk of the Court