

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

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KA 21-00615

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARYL GREEN, JR., DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (SHIRLEY A. GORMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered August 4, 2020. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance 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 plea of guilty, of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]). We agree with defendant, and the People correctly concede, that his waiver of the right to appeal is invalid (*see People v Thomas*, 34 NY3d 545, 564-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]). We are therefore not precluded from reviewing defendant's challenge to the severity of his sentence. Nevertheless, we reject defendant's contention that the sentence is unduly harsh and severe.

Entered: May 3, 2024

Ann Dillon Flynn
Clerk of the Court