

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

**200**

**KA 15-00424**

PRESENT: WHALEN, P.J., CENTRA, CARNI, NEMOYER, AND CURRAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSE L. JOUBERT, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (JOSEPH R. PLUKAS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Douglas A. Randall, J.), rendered December 9, 2014. 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 a plea of guilty of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Contrary to defendant's contention, the waiver of the right to appeal was knowingly, intelligently, and voluntarily entered (see *People v Goodwin*, 147 AD3d 1352, 1352 [4th Dept 2017], *lv denied* 29 NY3d 1032 [2017]; see generally *People v Sanders*, 25 NY3d 337, 340-341 [2015]). County Court ensured that defendant understood that "the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty" (*People v Lopez*, 6 NY3d 248, 256 [2006]; see *People v Brand*, 112 AD3d 1320, 1321 [4th Dept 2013], *lv denied* 23 NY3d 961 [2014]). Contrary to defendant's contention, the court was not required to advise defendant that the waiver of the right to appeal encompassed the court's suppression ruling (see *Brand*, 112 AD3d at 1321; see generally *People v Kemp*, 94 NY2d 831, 833 [1999]), and his challenge to the adverse suppression ruling is foreclosed by the valid waiver of the right to appeal (see *Kemp*, 94 NY2d at 833; *People v Carter*, 147 AD3d 1540, 1540 [4th Dept 2017], *lv denied* 29 NY3d 1030 [2017]). We agree with defendant, however, that the waiver of the right to appeal does not encompass his challenge to the severity of the sentence. Although "it is evident that defendant waived [his] right to appeal [his] conviction, there is no indication in the record that defendant waived the right to appeal the harshness of [his] sentence" (*People v Maracle*, 19 NY3d 925, 928 [2012]; see *People v Gang*, 145 AD3d 1566,

1566-1567 [4th Dept 2016], *lv denied* 29 NY3d 997 [2017])).  
Nevertheless, we reject defendant's contention that his sentence is  
unduly harsh and severe.

Entered: February 9, 2018

Mark W. Bennett  
Clerk of the Court