

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

1170

KA 16-01987

PRESENT: WHALEN, P.J., CARNI, CURRAN, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ADRIAN FAVORS, III, ALSO KNOWN AS "ACE,"
DEFENDANT-APPELLANT.

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

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County
(Christopher J. Burns, J.), rendered July 11, 2016. The judgment
convicted defendant, upon his plea of guilty, of burglary in the first
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 burglary in the first degree (Penal Law
§ 140.30 [3]). We agree with defendant that, as the People correctly
concede, defendant did not waive his right to appeal inasmuch as that
condition was part of a prior plea agreement that was withdrawn before
the instant plea was entered (*see People v Shay*, 130 AD3d 1499, 1499
[4th Dept 2015]; *People v Graham*, 187 AD2d 389, 389-390 [1st Dept
1992], *lv denied* 81 NY2d 840 [1993]). We nonetheless decline to
exercise our interest of justice jurisdiction to adjudicate defendant
a youthful offender (*see People v Sakinovic*, 149 AD3d 1596, 1596 [4th
Dept 2017]). Finally, the sentence is not unduly harsh or severe.

Entered: November 9, 2018

Mark W. Bennett
Clerk of the Court