

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

540

**KA 16-01242**

PRESENT: SMITH, J.P., TROUTMAN, WINSLOW, BANNISTER, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENITH K. BROWN, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES A. HOBBS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LEAH R. MERVINE OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Alex R. Renzi, J.), rendered May 25, 2016. The judgment convicted defendant upon a plea of guilty of attempted 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 his plea of guilty of attempted criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]). As defendant contends and the People correctly concede, defendant's waiver of the right to appeal does not encompass his challenge to the severity of the enhanced sentence inasmuch as Supreme Court "failed to advise defendant prior to his waiver 'of the potential period of incarceration that could be imposed for an enhanced sentence' " (*People v Newton* [appeal No. 1], 173 AD3d 1680, 1680 [4th Dept 2019]; see *People v Watson*, 169 AD3d 1526, 1528 [4th Dept 2019], lv denied 33 NY3d 982 [2019]). Nevertheless, the sentence is not unduly harsh or severe. We have reviewed defendant's remaining contentions and conclude that none warrants reversal or modification of the judgment.

Entered: August 20, 2020

Mark W. Bennett  
Clerk of the Court