

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

681

KA 18-01543

PRESENT: CENTRA, J.P., PERADOTTO, NEMOYER, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THOMAS BROOKS, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (SHERRY A. CHASE OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DANIELLE E. PHILLIPS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (John L. Michalski, A.J.), rendered May 30, 2018. The judgment convicted defendant upon his plea of guilty of rape 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 rape in the first degree (Penal Law § 130.35 [1]). We reject defendant's contention that the waiver of the right to appeal is invalid. The oral waiver, together with the written waiver, establishes that defendant knowingly, intelligently, and voluntarily waived the right to appeal (*see People v Sanders*, 180 AD3d 1327, 1328 [4th Dept 2020], *lv denied* 35 NY3d 973 [2020]; *People v Adams*, 177 AD3d 1334, 1334-1335 [4th Dept 2019], *lv denied* 34 NY3d 1125 [2020]; *see generally People v Thomas*, 34 NY3d 545, 560-563 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]). The valid waiver of the right to appeal encompasses defendant's challenge to the severity of the sentence (*see People v Lopez*, 6 NY3d 248, 255-256 [2006]; *People v Hidalgo*, 91 NY2d 733, 737 [1998]).

Entered: November 13, 2020

Mark W. Bennett
Clerk of the Court