

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

322

**KA 19-01435**

PRESENT: SMITH, J.P., LINDLEY, CURRAN, MONTOUR, AND OGDEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LUIS SOUCLAT-VEGA, DEFENDANT-APPELLANT.

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JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (TONYA PLANK OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

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Appeal from a judgment of the Monroe County Court (Vincent M. Dinolfo, J.), rendered June 6, 2019. The judgment convicted defendant upon his plea of guilty of assault in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of assault in the second degree (Penal Law § 120.05 [1]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. As the People correctly concede, defendant's waiver of the right to appeal is invalid and thus does not preclude our review of his challenge to the severity of his sentence (*see People v Thomas*, 34 NY3d 545, 564-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Hettig*, 210 AD3d 1508, 1508-1509 [4th Dept 2022], *lv denied* 39 NY3d 1073 [2023]). We nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: April 28, 2023

Ann Dillon Flynn  
Clerk of the Court