

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

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**KA 21-00483**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD D. TENNANT, JR., DEFENDANT-APPELLANT.

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PETER J. DIGIORGIO, JR., UTICA, FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (MICHAEL A. LABELLA OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Oneida County Court (Robert Bauer, J.), rendered February 5, 2021. The judgment convicted defendant upon his plea of guilty of burglary 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 burglary in the second degree (Penal Law § 140.25 [2]), defendant contends that his waiver of the right to appeal is invalid and that the enhanced sentence is unduly harsh and severe. Even assuming, arguendo, that defendant's waiver of the right to appeal was not knowingly, voluntarily and intelligently entered (*see People v Terry*, 203 AD3d 1578, 1578 [4th Dept 2022], *lv denied* 38 NY3d 1010 [2022]) or otherwise does not encompass his challenge to the severity of the sentence (*see People v Baker*, 204 AD3d 1471, 1471 [4th Dept 2022], *lv denied* 38 NY3d 1069 [2022]), we perceive no basis in the record to exercise our power to modify the sentence as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [b]).

Although defendant further contends that County Court erred in imposing an enhanced sentence without conducting a hearing pursuant to *People v Outley* (80 NY2d 702 [1993]), defendant failed to preserve that contention for our review (*see People v Peckham*, 195 AD3d 1437, 1437 [4th Dept 2021], *lv denied* 37 NY3d 994 [2021]). In any event, the record establishes that defendant, who failed to appear for sentencing and was arrested on new felony charges after he had pleaded guilty, admitted in open court that he had violated the conditions of the court's sentence promise, thus obviating the need for a hearing.

We have reviewed defendant's remaining contentions and conclude

that none warrants modification or reversal of the judgment.

Entered: June 30, 2023

Ann Dillon Flynn  
Clerk of the Court