

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

949

**KA 22-00978**

PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, OGDEN, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FIMBO KAKESA, DEFENDANT-APPELLANT.  
(APPEAL NO. 1.)

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (KRISTINE BIALY-VIAU OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRADLEY W. OASTLER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Thomas J. Miller, J.), rendered May 12, 2022. The judgment convicted defendant, upon a plea of guilty, of criminal possession of a weapon in the second degree.

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

Memorandum: In appeal Nos. 1 and 2, defendant appeals from separate judgments convicting him, upon his guilty pleas, of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Defendant contends in each appeal that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. Even assuming, arguendo, that defendant's waivers of the right to appeal are invalid and therefore do not preclude our review of his challenge to the severity of his sentences (*see People v Hoffman*, 191 AD3d 1262, 1263 [4th Dept 2021], *lv denied* 36 NY3d 1097 [2021]; *People v Love*, 181 AD3d 1193, 1193 [4th Dept 2020]), we conclude in each appeal that the sentence is not unduly harsh or severe.

Entered: December 22, 2023

Ann Dillon Flynn  
Clerk of the Court