

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

639

**KA 21-01721**

PRESENT: SMITH, J.P., BANNISTER, MONTOUR, DELCONTE, AND HANNAH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CURTIS MALCOLM, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (SUSAN HUTCHISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. KEANE, ACTING DISTRICT ATTORNEY, BUFFALO (DANIEL J. PUNCH OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Erie County Court (Kenneth F. Case, J.), rendered October 28, 2021. The judgment convicted defendant upon his plea of guilty of assault on a police officer and unlawful fleeing a police officer in a motor vehicle 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 assault on a police officer (Penal Law § 120.08) and unlawful fleeing a police officer in a motor vehicle in the second degree (§ 270.30). Contrary to defendant's contention, the record establishes that the oral colloquy, together with the written waiver of the right to appeal, was adequate to ensure that defendant's waiver of the right to appeal was made knowingly, intelligently, and voluntarily (see *People v Thomas*, 34 NY3d 545, 564 [2019], cert denied – US –, 140 S Ct 2634 [2020]; *People v Rowell*, 224 AD3d 1335, 1335 [4th Dept 2024], lv denied 41 NY3d 985 [2024]). The valid waiver forecloses defendant's challenge to County Court's "discretionary decision to deny youthful offender status" (*People v Stackhouse*, 214 AD3d 1303, 1304 [4th Dept 2023], lv denied 39 NY3d 1157 [2023]), any request that we exercise our interest of justice jurisdiction "to adjudicate him a youthful offender" (*People v Middlebrooks*, 167 AD3d 1483, 1484 [4th Dept 2018], lv denied 32 NY3d 1207 [2019], reconsideration denied 33 NY3d 1033 [2019]), and defendant's "challenge to the severity of the sentence" (*People v Lopez*, 6 NY3d 248, 256 [2006]; see *Rowell*, 224 AD3d at 1335-1336).

Entered: October 4, 2024

Ann Dillon Flynn  
Clerk of the Court