

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

714

KA 22-00123

PRESENT: SMITH, J.P., CURRAN, MONTOUR, GREENWOOD, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GAIL BARNWELL, DEFENDANT-APPELLANT.

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

MICHAEL J. KEANE, ACTING DISTRICT ATTORNEY, BUFFALO (MINDY F. VANLEUVAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (M. William Boller, A.J.), rendered December 1, 2021. 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: Defendant appeals from a judgment convicting her, upon her plea of guilty, of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Contrary to defendant's contention, we conclude on this record that defendant's waiver of the right to appeal was knowing, voluntary, and intelligent (*see People v Scott*, 144 AD3d 1597, 1598 [4th Dept 2016], *lv denied* 28 NY3d 1150 [2017]; *People v DeFazio*, 105 AD3d 1438, 1439 [4th Dept 2013], *lv denied* 21 NY3d 1015 [2013]; *see generally People v Thomas*, 34 NY3d 545, 559-564 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]). Defendant's valid waiver of the right to appeal precludes our review of her challenge to the severity of her sentence (*see People v Lopez*, 6 NY3d 248, 255-256 [2006]).

Entered: November 15, 2024

Ann Dillon Flynn
Clerk of the Court