

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

**849**

**KA 14-00519**

PRESENT: SCUDDER, P.J., CARNI, LINDLEY, VALENTINO, AND WHALEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAIRO S. CHAVEZ, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered March 10, 2014. The judgment convicted defendant, upon a jury verdict, of rape in the third degree (two counts).

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of two counts of rape in the third degree (Penal Law § 130.25 [2]). Although defendant did not waive the right to appeal and thus his challenge to the severity of the sentence is properly before us (*see generally People v Lopez*, 6 NY3d 248, 255; *People v Hidalgo*, 91 NY2d 733, 737), we nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: July 2, 2015

Frances E. Cafarell  
Clerk of the Court