

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

838

KA 15-00606

PRESENT: WHALEN, P.J., CENTRA, NEMOYER, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL TEDESCO, JR., DEFENDANT-APPELLANT.

ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (LYLE T. HAJDU OF COUNSEL),
FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Supreme Court, Erie County (M. William Boller, A.J.), rendered February 20, 2015. The judgment revoked defendant's sentence of probation and imposed a sentence of imprisonment.

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

Memorandum: Defendant appeals from a judgment revoking the sentence of probation imposed upon his conviction of criminal sale of a controlled substance in the fourth degree (Penal Law § 220.34 [1]) and sentencing him to a determinate term of imprisonment, followed by a period of postrelease supervision. Even assuming, arguendo, that defendant executed a valid waiver of the right to appeal at the underlying plea proceeding, we conclude that the waiver does not encompass his challenge to the severity of the sentence imposed following his violation of probation (see *People v Russell*, 133 AD3d 1231, 1231; *People v Dexter*, 71 AD3d 1504, 1504-1505, lv denied 14 NY3d 887). We further conclude, however, that the sentence imposed upon defendant's violation of probation is not unduly harsh or severe.

Entered: October 7, 2016

Frances E. Cafarell
Clerk of the Court