

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

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KA 12-02313

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GREGORY E. FARR, DEFENDANT-APPELLANT.

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

LORI PETTIT RIEMAN, DISTRICT ATTORNEY, LITTLE VALLEY, FOR RESPONDENT.

Appeal from a judgment of the Cattaraugus County Court (Larry M. Himelein, J.), rendered July 16, 2012. The judgment convicted defendant, upon his plea of guilty, of murder in the second degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of murder in the second degree (Penal Law § 125.25 [1]), defendant contends that the waiver of the right to appeal is not valid and that the sentence is unduly harsh and severe. Although we conclude that defendant's waiver of the right to appeal does not encompass his challenge to the severity of the sentence inasmuch as there is no indication in the record of the plea allocution that defendant was waiving his right to appeal the severity of the sentence (see *People v Maracle*, 19 NY3d 925, 928; *People v Pimentel*, 108 AD3d 861, 862, *lv denied* 21 NY3d 1076), we nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: February 7, 2014

Frances E. Cafarell
Clerk of the Court