

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

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KA 10-01782

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BRIAN M. FISHER, ALSO KNOWN AS BRYAN MAURICE
FISHER, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF
COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County
(Daniel J. Doyle, J.), rendered June 14, 2010. The judgment convicted
defendant, upon his 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: On appeal from a judgment convicting him upon his
plea of guilty of criminal possession of a weapon in the second degree
(Penal Law § 265.03 [3]), defendant contends that the waiver of the
right to appeal is not valid and challenges the severity of the
sentence. Although we agree with defendant that the waiver of the
right to appeal is invalid because the perfunctory inquiry made by
Supreme Court was "insufficient to establish that the court 'engage[d]
the defendant in an adequate colloquy to ensure that the waiver of the
right to appeal was a knowing and voluntary choice' " (*People v Brown*,
296 AD2d 860, 860, *lv denied* 98 NY2d 767; *see People v Hamilton*, 49
AD3d 1163, 1164), we nevertheless conclude that the sentence is not
unduly harsh or severe.

Entered: June 13, 2014

Frances E. Cafarell
Clerk of the Court