

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

634

**KA 13-00676**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PAUL E. BUCK, JR., DEFENDANT-APPELLANT.

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ROBERT M. PUSATERI, CONFLICT DEFENDER, LOCKPORT (EDWARD P. PERLMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (LAURA T. BITTNER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered March 21, 2013. The judgment convicted defendant, upon his plea of guilty, of assault in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a plea of guilty of assault in the second degree (Penal Law § 120.05 [2]). The waiver by defendant of the right to appeal encompasses his challenge to the factual sufficiency of the plea allocution (*see People v Walker*, 111 AD3d 1423, 1424, *lv denied* 22 NY3d 1142) and, in any event, that challenge is unpreserved for our review inasmuch as defendant did not move to withdraw the plea or to vacate the judgment of conviction (*see People v Lopez*, 71 NY2d 662, 665; *Walker*, 111 AD3d at 1424). The valid waiver by defendant of the right to appeal encompasses his challenge to the severity of the sentence (*see People v Lopez*, 6 NY3d 248, 255-256).

Entered: June 20, 2014

Frances E. Cafarell  
Clerk of the Court