

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

842

KA 13-01140

PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PERADOTTO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEREMY L. FINCH, DEFENDANT-APPELLANT.

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

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

Appeal from a judgment of the Cattaraugus County Court (Ronald D. Ploetz, J.), rendered June 10, 2013. The judgment convicted defendant, upon his plea of guilty, of assault in the second degree and criminal trespass 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 assault in the second degree (Penal Law § 120.05 [3]) and criminal trespass in the second degree (§ 140.15 [1]), defendant contends that his waiver of the right to appeal is not valid and that his sentence is unduly harsh and severe. Although we conclude that defendant's waiver of the right to appeal is invalid inasmuch as the minimal perfunctory inquiry made by County Court was insufficient to "establish that [he] understood that the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty" (*People v Lopez*, 6 NY3d 248, 256), we nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: September 26, 2014

Frances E. Cafarell
Clerk of the Court