

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

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**KA 14-01536**

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EDWARD D. PRINCE, DEFENDANT-APPELLANT.

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

LORI PETTIT RIEMAN, DISTRICT ATTORNEY, LITTLE VALLEY (AMBER L. KERLING OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Cattaraugus County Court (Ronald D. Ploetz, J.), rendered July 7, 2014. The judgment convicted defendant, upon his plea of guilty, of rape in the third degree and criminal contempt 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 his plea of guilty of, inter alia, rape in the third degree (Penal Law § 130.25 [2]). We agree with defendant that his waiver of the right to appeal is invalid because, based on County Court's statements at the plea proceeding, "defendant may have erroneously believed that the right to appeal is automatically extinguished upon entry of a guilty plea" (*People v Moyett*, 7 NY3d 892, 893). We nevertheless conclude that the sentence of six months of incarceration and 10 years of probation is not unduly harsh or severe. We note that the period of probation was required by law to be 10 years because rape in the third degree is a felony sexual assault within the meaning of section 65.00 (3) of the Penal Law (see § 65.00 [3] [a] [iii]).

Entered: July 1, 2016

Frances E. Cafarell  
Clerk of the Court