

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

1478

KA 15-02154

PRESENT: WHALEN, P.J., SMITH, CARNI, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LUIS COLON, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (MICHAEL S. DEAL OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (JULIE BENDER FISKE OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Thomas P. Franczyk, J.), rendered September 30, 2015. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree and attempted assault in the first 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 criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) and attempted assault in the first degree (§§ 110.00, 120.10 [1]). County Court "expressly ascertained from defendant that, as a condition of the plea, he was agreeing to waive his right to appeal, and the court did not conflate that right with those automatically forfeited by a guilty plea" (*People v McCrea*, 140 AD3d 1655, 1655 [4th Dept 2016], lv denied 28 NY3d 933 [2016] [internal quotation marks omitted]; see *People v Toney*, 153 AD3d 1583, 1583 [4th Dept 2017]). The court also specifically explained that the waiver included defendant's right to appeal his "conviction and sentence," thereby foreclosing defendant's challenge to the severity of his sentence (see *Toney*, 153 AD3d at 1583; cf. *People v Maracle*, 19 NY3d 925, 928 [2012]).

Entered: December 22, 2017

Mark W. Bennett
Clerk of the Court