

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

226

KA 17-00863

PRESENT: WHALEN, P.J., SMITH, CARNI, NEMOYER, AND CURRAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEREMY L. SOUTAR, DEFENDANT-APPELLANT.

CHARLES A. MARANGOLA, MORAVIA, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered January 29, 2015. The judgment convicted defendant, upon his plea of guilty, of course of sexual conduct against a child in the first 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 course of sexual conduct against a child in the first degree (Penal Law § 130.75 [1] [b]), defendant challenges the severity of the sentence. Defendant's waiver of the right to appeal is invalid because the perfunctory inquiry made by County Court was "insufficient to establish that the court 'engage[d] . . . 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 [4th Dept 2002], *lv denied* 98 NY2d 767 [2002]; *see People v Hamilton*, 49 AD3d 1163, 1164 [4th Dept 2008]). Nevertheless, we conclude that the sentence is not unduly harsh or severe (*see People v Carter*, 147 AD3d 1514, 1516 [4th Dept 2017], *lv denied* 29 NY3d 1030 [2017]).

Entered: March 22, 2019

Mark W. Bennett
Clerk of the Court