

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

843

KA 17-01753

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEFFREY R. MAGEE, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JAMES M. SPECYAL OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (SUSAN M. HOWARD OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered July 10, 2017. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a controlled substance in the third 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 attempted criminal possession of a controlled substance in the third degree (Penal Law §§ 110.00, 220.16 [1]), defendant contends that he did not validly waive his right to appeal and that the sentence is unduly harsh and severe. The record establishes, however, that defendant's waiver of the right to appeal, as a condition of the bargained-for plea agreement, was knowing, intelligent, and voluntary (*see People v Bryant*, 28 NY3d 1094, 1096 [2016]; *People v Colon*, 122 AD3d 1309, 1309 [4th Dept 2014], *lv denied* 25 NY3d 1200 [2015]). The valid waiver of the right to appeal encompasses defendant's challenge to the severity of the sentence (*see People v Lopez*, 6 NY3d 248, 255-256 [2006]).

Entered: September 27, 2019

Mark W. Bennett
Clerk of the Court