

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

1055

KA 17-00662

PRESENT: SMITH, J.P., PERADOTTO, DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LUIS GONZALEZ, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael F. Pietruszka, J.), rendered March 23, 2017. The judgment convicted defendant, upon a plea of guilty, of attempted burglary 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 attempted burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]). We affirm. Even assuming, arguendo, that defendant did not validly waive his right to appeal, we nevertheless conclude that the sentence is not unduly harsh or severe. We note that the certificate of conviction incorrectly indicates that defendant was convicted of a class E felony, and it must be amended to reflect his conviction of a class D felony (*see generally People v Correa*, 145 AD3d 1640, 1641 [4th Dept 2016]).

Entered: November 15, 2019

Mark W. Bennett
Clerk of the Court