

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

1145

KA 19-02153

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KIRT D. NICE, DEFENDANT-APPELLANT.

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

LORI PETTIT RIEMAN, DISTRICT ATTORNEY, LITTLE VALLEY, FOR RESPONDENT.

Appeal from a judgment of the Cattaraugus County Court (Ronald D. Ploetz, J.), rendered September 3, 2019. The judgment convicted defendant upon a plea of guilty of grand larceny in the fourth degree, criminal contempt in the second degree, unlawful fleeing a police officer in a motor vehicle in the third degree, reckless driving, and petit larceny.

It is hereby ORDERED that said appeal is unanimously dismissed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of, inter alia, grand larceny in the fourth degree (Penal Law § 155.30 [8]), defendant contends that his waiver of the right to appeal is not valid and that the sentence is unduly harsh and severe. Defendant's challenge to the severity of the sentence is moot inasmuch as he has completed serving his sentence (*see People v Mackey*, 79 AD3d 1680, 1681 [4th Dept 2010], *lv denied* 16 NY3d 860 [2011]; *People v Werner*, 71 AD3d 1456, 1456-1457 [4th Dept 2010], *lv denied* 15 NY3d 758 [2010]; *People v Griffin*, 239 AD2d 936, 936 [4th Dept 1997]), and we therefore need not reach defendant's contention with respect to the alleged invalidity of the waiver of the right to appeal (*see People v Seppe*, - AD3d -, -, 2020 NY Slip Op 06888, *1 [4th Dept 2020]; *People v Bald*, 34 AD3d 1362, 1362 [4th Dept 2006]).

Entered: December 23, 2020

Mark W. Bennett
Clerk of the Court