

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

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KA 08-02513

PRESENT: SMITH, J.P., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NATHAN TRUEHEART, DEFENDANT-APPELLANT.

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

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHELLE L. CIANCIOSA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (John F. O'Donnell, J.), rendered August 8, 2006. The judgment convicted defendant, upon his plea of guilty, of rape 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 rape in the first degree (Penal Law § 130.35 [4]), defendant contends that his waiver of the right to appeal was invalid. We reject that contention. The record "establish[es] that the defendant understood that the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty" (*People v Lopez*, 6 NY3d 248, 256). The waiver by defendant of the right to appeal encompasses his challenge to Supreme Court's suppression rulings (*see People v Kemp*, 94 NY2d 831, 833; *People v Gordon*, 42 AD3d 964, *lv denied* 9 NY3d 876), as well as his challenge to the severity of the sentence (*see People v Lopez*, 6 NY3d at 256; *People v Brown*, 41 AD3d 1234, *lv denied* 9 NY3d 921).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court