

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

812

KA 08-00581

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, CARNI, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EVONY CAPPS, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BARBARA J. DAVIES OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (J. MICHAEL MARION OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered February 21, 2007. The judgment convicted defendant, upon her plea of guilty, of manslaughter in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting her upon her plea of guilty of manslaughter in the first degree (Penal Law § 125.20). We conclude that the waiver by defendant of the right to appeal was knowingly and voluntarily entered (*see People v Lopez*, 6 NY3d 248, 256), and that valid waiver encompasses her challenge to the severity of the sentence (*see id.; People v Kearns*, 50 AD3d 1514, *lv denied* 11 NY3d 790). The valid waiver also encompasses the contention of defendant that County Court should have afforded her youthful offender status (*see Kearns*, 50 AD3d at 1515) and, in any event, defendant failed to preserve her contention for our review inasmuch as she did not request that status during the plea proceedings or at sentencing (*see People v Fowler*, 28 AD3d 1183, 1184, *lv denied* 7 NY3d 788).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court