

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

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KA 10-02500

PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEREMY CLARK, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT B. HALLBORG, JR., 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 (Gerald J. Whalen, J.), rendered November 30, 2010. The judgment convicted defendant, upon his plea of guilty, of attempted burglary in the second 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 burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]), defendant contends that the waiver of the right to appeal was not knowingly, intelligently and voluntarily entered. We reject that contention (*see generally People v Lopez*, 6 NY3d 248, 256). The valid waiver by defendant of the right to appeal does not encompass his contention with respect to the severity of the sentence, however, because the record establishes that Supreme Court "failed to advise defendant of the 'potential periods of incarceration that could be imposed before he waived his right to appeal' " (*People v McLean*, 302 AD2d 934; *cf. People v Lococo*, 92 NY2d 825, 827). We conclude, however, that the sentence is not unduly harsh or severe.

Entered: June 8, 2012

Frances E. Cafarell
Clerk of the Court