

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

652

**KA 11-01084**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD A. SIMMONS, JR., DEFENDANT-APPELLANT.

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DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (MARY-JEAN BOWMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (LAURA T. BITTNER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Niagara County Court (Sara S. Sperrazza, J.), rendered May 11, 2011. The judgment convicted defendant, upon his plea of guilty, of assault 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 assault in the second degree (Penal Law § 120.05 [2]). Defendant's valid unrestricted waiver of the right to appeal forecloses any challenge to the severity of the sentence (see generally *People v Lopez*, 6 NY3d 248, 256; *People v Hidalgo*, 91 NY2d 733, 737).

Entered: June 8, 2012

Frances E. Cafarell  
Clerk of the Court