

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

723

KA 11-01263

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANTHONY RIVERA, 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 (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), rendered May 18, 2011. The judgment convicted defendant, upon his plea of guilty, of burglary in the second degree (two counts) and burglary in the third 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 two counts of burglary in the second degree (Penal Law § 140.25 [2]) and one count of burglary in the third degree (§ 140.20). We agree with defendant that his waiver of the right to appeal does not encompass his challenge to the severity of the sentence because he waived his right to appeal before Supreme Court informed him of the potential periods of imprisonment that could be imposed (*see People v Mingo*, 38 AD3d 1270, 1271; *see generally People v Lococo*, 92 NY2d 825, 827). Nevertheless, we conclude that the sentence is not unduly harsh or severe.

Entered: June 8, 2012

Frances E. Cafarell
Clerk of the Court