

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

1184

KA 12-01096

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RAMONE WALKER, DEFENDANT-APPELLANT.

ROBERT M. PUSATERI, CONFLICT DEFENDER, LOCKPORT (EDWARD P. PERLMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered January 4, 2012. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the fifth degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a plea of guilty of criminal possession of a controlled substance in the fifth degree (Penal Law § 220.06 [5]). The waiver by defendant of the right to appeal encompasses his challenge to the factual sufficiency of the plea allocution (*see People v Thousand*, 96 AD3d 1439, 1439-1440, *lv denied* 19 NY3d 1002) and, moreover, that challenge is unreserved for our review inasmuch as defendant did not move to withdraw the plea or vacate the judgment of conviction (*see People v Lopez*, 71 NY2d 662, 665; *People v Nelson*, 105 AD3d 1389, 1390, *lv denied* 21 NY3d 1044). The waiver of the right to appeal also encompasses defendant's contention that the sentence is unduly harsh and severe (*see generally People v Maracle*, 19 NY3d 925, 928; *People v Hidalgo*, 91 NY2d 733, 737).

Entered: November 15, 2013

Frances E. Cafarell
Clerk of the Court