

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

845

KA 14-00514

PRESENT: SCUDDER, P.J., CARNI, LINDLEY, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANTONIO L. JAMES, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered November 27, 2013. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the fourth 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 grand larceny in the fourth degree (Penal Law § 155.30 [1]), defendant contends that his waiver of the right to appeal is unenforceable and that his sentence is unduly harsh and severe. "Even assuming, arguendo, that defendant's waiver of the right to appeal is unenforceable . . . , or that it does not otherwise preclude his challenge to the severity of his sentence" (*People v Vann*, 115 AD3d 1334, 1334), we nevertheless perceive no basis to modify the sentence, an indeterminate term of imprisonment of 1½ to 3 years, as a matter of discretion in the interest of justice (see CPL 470.15 [6] [b]). We note that, although defendant was only 22 years old at the time of sentencing, he already had an extensive criminal record, including four prior felonies, and he failed to complete three separate terms of probation.

Entered: July 2, 2015

Frances E. Cafarell
Clerk of the Court