

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

1076

KA 18-00666

PRESENT: SMITH, J.P., CARNI, LINDLEY, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TIMOTHY STEWARD, DEFENDANT-APPELLANT.

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

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DONNA A. MILLING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Susan M. Eagan, J.), rendered January 19, 2018. The judgment convicted defendant upon his plea of guilty of attempted murder in the second degree, assault in the first degree and criminal possession of a weapon 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 murder in the second degree (Penal Law §§ 110.00, 125.25 [1]), assault in the first degree (§ 120.10 [1]), and criminal possession of a weapon in the second degree (§ 265.03 [3]), defendant contends that his waiver of the right to appeal was invalid. We reject that contention and conclude that the record establishes that defendant's waiver of the right to appeal was knowing, intelligent, and voluntary (*see People v Bryant*, 28 NY3d 1094, 1096 [2016]; *People v Colon*, 122 AD3d 1309, 1309 [4th Dept 2014], *lv denied* 25 NY3d 1200 [2015]). Defendant's valid waiver of the right to appeal encompasses his challenge to the severity of the sentence (*see People v Lopez*, 6 NY3d 248, 256 [2006]).

Entered: November 8, 2019

Mark W. Bennett
Clerk of the Court