

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D54687
N/htr

_____AD3d_____

Submitted - February 7, 2018

RUTH C. BALKIN, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
JOSEPH J. MALTESE
FRANCESCA E. CONNOLLY, JJ.

2016-11755

DECISION & ORDER

The People, etc., respondent,
v Agustin Pena-Gonzalez, appellant.

(Ind. No. 16-00243)

Philip H. Schnabel, Chester, NY, for appellant.

David M. Hoovler, District Attorney, Middletown, NY (Elizabeth L. Schulz of counsel), for respondent.

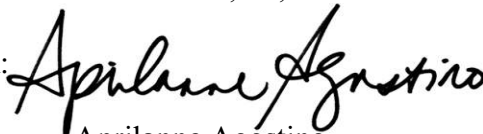
Appeal by the defendant from a judgment of the County Court, Orange County (Nicholas De Rosa, J.), rendered October 7, 2016, convicting him of rape in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's purported waiver of his right to appeal was invalid (*see People v Bradshaw*, 18 NY3d 257, 267; *People v Johnson*, 135 AD3d 960; *People v Guarchaj*, 122 AD3d 878, 879; *People v Pelaez*, 100 AD3d 803), and, thus, does not preclude review of his excessive sentence claim. However, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

BALKIN, J.P., CHAMBERS, ROMAN, MALTESE and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

February 28, 2018

PEOPLE v PENA-GONZALEZ, AGUSTIN