

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

765

KA 14-00049

PRESENT: SCUDDER, P.J., SMITH, SCONIERS, VALENTINO, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT W. TETRAULT, DEFENDANT-APPELLANT.

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

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered October 21, 2013. The judgment convicted defendant, upon his plea of guilty, of attempted assault in the second degree and attempted criminal possession of a weapon in the third 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 assault in the second degree (Penal Law §§ 110.00, 120.05 [2]) and attempted criminal possession of a weapon in the third degree (§§ 110.00, 265.02 [1]), defendant contends that his waiver of the right to appeal is not valid and challenges the severity of the sentence. We agree with defendant that his waiver of the right to appeal is invalid because, during the course of the allocution concerning the waiver of defendant's right to appeal his conviction, County Court did not mention "that he was also waiving his right to appeal any issue concerning the severity of the sentence" (*People v Peterson*, 111 AD3d 1412, 1412; see *People v Pimentel*, 108 AD3d 861, 862, *lv denied* 21 NY3d 706). Nevertheless, we conclude that the sentence is not unduly harsh or severe.

Entered: June 12, 2015

Frances E. Cafarell
Clerk of the Court