

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

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**KA 14-00922**

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, NEMOYER, AND CURRAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALHASSAN KABBA, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LEAH R. MERVINE OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Vincent M. Dinolfo, J.), rendered April 4, 2014. The judgment convicted defendant, upon his plea of guilty, of rape in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of rape in the second degree (Penal Law § 130.30 [1]). We agree with defendant that the waiver of the right to appeal does not encompass his challenge to the severity of the sentence. "[N]o mention was made on the record during the course of the allocution concerning the waiver of defendant's right to appeal his conviction that he was also waiving his right to appeal the [severity] of his sentence" (*People v Pimentel*, 108 AD3d 861, 862, 1v denied 21 NY3d 1076; see *People v Maracle*, 19 NY3d 925, 928). Moreover, the written waiver of the right to appeal signed by defendant does not state that defendant was waiving his right to appeal his sentence. We nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: June 9, 2017

Frances E. Cafarell  
Clerk of the Court