

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

1144

KA 16-01792

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JERRY L. WALLS, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JAMES M. SPECYAL OF COUNSEL), FOR DEFENDANT-APPELLANT.

MATTHEW D. NAFUS, SPECIAL DISTRICT ATTORNEY, SCOTTSVILLE, FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered June 13, 2016. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the fourth 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 criminal sale of a controlled substance in the fourth degree (Penal Law § 220.34 [1]). Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid and thus does not preclude our review of his challenge to the severity of his sentence (see *People v Johnson*, 161 AD3d 1529, 1529 [4th Dept 2018]; *People v Dieguez-Castillo*, 124 AD3d 1344, 1345 [4th Dept 2015], *lv denied* 25 NY3d 950 [2015]), we nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: November 9, 2018

Mark W. Bennett
Clerk of the Court