

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

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KA 16-01951

PRESENT: CENTRA, J.P., CARNI, LINDLEY, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RASHAUN A. HOLT, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (RICHARD L. SULLIVAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (David W. Foley, A.J.), rendered September 29, 2016. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a controlled substance in the fifth 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 criminal possession of a controlled substance in the fifth degree (Penal Law §§ 110.00, 220.06 [5]), defendant contends that his agreed-upon sentence is unduly harsh and severe. Even assuming, arguendo, that defendant's contention is not encompassed by his waiver of the right to appeal, we perceive no basis in the record to exercise our power to modify defendant's negotiated sentence as a matter of discretion in the interest of justice (see CPL 470.15 [6] [b]). We note that defendant has four prior felony drug convictions and that he was on parole when he committed this offense.

Entered: March 15, 2019

Mark W. Bennett
Clerk of the Court