

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

1152

KA 18-00914

PRESENT: SMITH, J.P., CARNI, NEMOYER, CURRAN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THEODIS HILL, JR., DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KAIXI XU OF COUNSEL),
FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (ROBERT J. SHOEMAKER OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Genesee County
(Emilio L. Colaiacovo, J.), rendered January 17, 2018. The judgment
convicted defendant upon his plea of guilty of assault in the second
degree.

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

Memorandum: In appeal Nos. 1 and 2, defendant appeals from two
judgments, each convicting him upon his plea of guilty during a single
plea proceeding of assault in the second degree (Penal Law § 120.05
[2]). Even assuming, arguendo, that defendant's waiver of the right
to appeal was invalid (*see People v Thomas*, 34 NY3d 545, 565-566
[2019], *cert denied* – US –, 140 S Ct 2634 [2020]) and thus does not
preclude our review of his challenge to the severity of his sentences
(*see People v Baker*, 158 AD3d 1296, 1296 [4th Dept 2018], *lv denied* 31
NY3d 1011 [2018]), we conclude in each appeal that the sentence is not
unduly harsh or severe.

Entered: February 5, 2021

Mark W. Bennett
Clerk of the Court