

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

594

KA 21-00850

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, OGDEN, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

COURTNEY MCDONELL, DEFENDANT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Kenneth F. Case, J.), rendered June 17, 2019. The judgment convicted defendant upon a plea of guilty of attempted course of sexual conduct against a child.

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

Memorandum: Defendant appeals from a judgment convicting her upon her plea of guilty of attempted course of sexual conduct against a child (Penal Law §§ 110.00, 130.75 [1] [a]). We affirm.

Even assuming, *arguendo*, that defendant's waiver of the right to appeal is invalid and therefore does not preclude our review of her challenge to the severity of her sentence (*see People v Biso*, 36 NY3d 1013, 1017-1018 [2020]; *People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Lovines*, 208 AD3d 1639, 1639 [4th Dept 2022]), we conclude that the sentence is not unduly harsh or severe.

Defendant also contends that County Court lost jurisdiction to impose sentence based on the seven-month delay between the entry of the plea and sentencing. That contention is unpreserved for our review inasmuch as defendant did not object to the delay in County Court, nor did she move to dismiss the indictment on that ground (*see People v Guichard*, 194 AD3d 745, 745 [2d Dept 2021], *lv denied* 37 NY3d 972 [2021]; *People v Vasquez*, 168 AD3d 1185, 1186 [3d Dept 2019], *lv denied* 33 NY3d 954 [2019]; *see generally* CPL 470.05 [2]). We decline to exercise our power to reach that contention as a matter of discretion in the interest of justice (*see* CPL 470.15 [3] [c]).

Entered: September 29, 2023

Ann Dillon Flynn
Clerk of the Court