

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

925

KA 19-01491

PRESENT: SMITH, J.P., BANNISTER, MONTOUR, NOWAK, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RASHAUN CAMERON, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (THOMAS M. LEITH OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRADLEY W. OASTLER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (Gordon J. Cuffy, A.J.), rendered June 29, 2018. The judgment convicted defendant upon his plea of guilty of burglary 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 burglary in the second degree (Penal Law § 140.25 [2]). As defendant contends and the People correctly concede, his waiver of the right to appeal is invalid. There is no basis in the record upon which to conclude that Supreme Court "ensured that . . . defendant understood that the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty" (*People v Thompson*, 219 AD3d 1666, 1667 [4th Dept 2023] [internal quotation marks omitted]; see *People v Robbins*, 213 AD3d 1278, 1279 [4th Dept 2023]). In addition, the court mischaracterized the waiver as an "absolute bar" to the taking of an appeal (*People v Thomas*, 34 NY3d 545, 565 [2019], cert denied – US –, 140 S Ct 2634 [2020]; see *People v Marshall*, 214 AD3d 1360, 1361 [4th Dept 2023], lv denied 40 NY3d 929 [2023]). Contrary to defendant's contention, however, the sentence is not unduly harsh or severe.

Entered: December 22, 2023

Ann Dillon Flynn
Clerk of the Court