

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

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KA 22-01773

PRESENT: CURRAN, J.P., SMITH, GREENWOOD, DELCONTE, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ARTHUR E. MASON, DEFENDANT-APPELLANT.

BANASIAK LAW OFFICE, PLLC, SYRACUSE (PIOTR BANASIAK OF COUNSEL), FOR DEFENDANT-APPELLANT.

SHAUN M. CHASE, SPECIAL PROSECUTOR, SYRACUSE, FOR RESPONDENT.

Appeal from a judgment of the Oswego County Court (Armen J. Nazarian, J.), rendered July 27, 2022. The judgment convicted defendant, upon his plea of guilty, of unlawful manufacture of methamphetamine in the third 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 unlawful manufacture of methamphetamine in the third degree (Penal Law § 220.73 [1]). We affirm.

Preliminarily, we agree with defendant that, contrary to the People's assertion, the waiver of the right to appeal is invalid. Defendant orally waived his right to appeal and executed a written waiver thereof. The language in the written waiver, however, is "inaccurate and misleading insofar as it purports to impose 'an absolute bar to the taking of a direct appeal' and to deprive defendant of his 'attendant rights to counsel and poor person relief, [as well as] all postconviction relief separate from the direct appeal' " (*People v Fernandez*, 218 AD3d 1257, 1258 [4th Dept 2023], *lv denied* 40 NY3d 1012 [2023], quoting *People v Thomas*, 34 NY3d 545, 565 [2019], *cert denied* — US —, 140 S Ct 2634 [2020]; see *People v Rumph*, 207 AD3d 1209, 1210 [4th Dept 2022], *lv denied* 39 NY3d 1075 [2023]; *People v Hunter*, 203 AD3d 1686, 1686 [4th Dept 2022], *lv denied* 38 NY3d 1033 [2022]; *People v Hughes*, 199 AD3d 1332, 1333 [4th Dept 2021]). Although County Court's colloquy "remedied the mischaracterization of the waiver as an absolute bar to the right to appeal," the court's verbal statements "did nothing to counter the other inaccuracies set forth in the written appeal waiver" (*Hughes*, 199 AD3d at 1333; see *Fernandez*, 218 AD3d at 1258; *Rumph*, 207 AD3d at 1210; *Hunter*, 203 AD3d at 1686). We thus conclude that defendant's purported waiver of the right to appeal is not enforceable inasmuch as

the totality of the circumstances fails to reveal that defendant "understood the nature of the appellate rights being waived" (*Thomas*, 34 NY3d at 559).

We nevertheless reject defendant's contention that the bargained-for sentence is unduly harsh and severe. Finally, we note that the uniform sentence and commitment form incorrectly states that defendant was sentenced as a second felony offender, and therefore it must be amended to reflect that he was actually sentenced as a second felony drug offender (see *People v Jones*, 224 AD3d 1348, 1353 [4th Dept 2024], *lv denied* 41 NY3d 1019 [2024]).