

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

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KA 22-01843

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL EASLEY, DEFENDANT-APPELLANT.

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

MICHAEL J. KEANE, ACTING DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Susan M. Eagan, J.), rendered September 28, 2022. The judgment convicted defendant, upon a guilty plea, of attempted criminal possession of a controlled substance 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 a plea of guilty, of attempted criminal possession of a controlled substance in the third degree (Penal Law §§ 110.00, 220.16 [12]). As the People correctly concede, defendant's waiver of the right to appeal is invalid (*see People v Thomas*, 34 NY3d 545, 564-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Harold*, 233 AD3d 1503, 1503 [4th Dept 2024]) and therefore does not preclude our review of his challenge to the severity of the sentence (*see Harold*, 233 AD3d at 1503). We nevertheless conclude that the sentence is not unduly harsh or severe. Finally, we note that County Court misstated at sentencing that defendant was a second felony offender, rather than a second felony drug offender previously convicted of a violent felony, and the uniform sentence and commitment form incorrectly states that defendant was sentenced as a second felony offender. The uniform sentence and commitment form must be amended to reflect that defendant was actually sentenced as a second felony drug offender previously convicted of a violent felony (*see* § 70.70 [1] [b]; [4]; *People v Chourb*, 232 AD3d 1272, 1274-1275 [4th Dept 2024], *lv denied* 42 NY3d 1079 [2025]).

Entered: March 21, 2025

Ann Dillon Flynn
Clerk of the Court