

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

588

KA 23-00064

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JASON NIEVES, DEFENDANT-APPELLANT.

TINA L. HARTWELL, PUBLIC DEFENDER, UTICA (DAVID A. COOKE OF COUNSEL),
FOR DEFENDANT-APPELLANT.

TODD C. CARVILLE, DISTRICT ATTORNEY, UTICA (ROBERT ROSE OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered June 26, 2018. The judgment convicted defendant upon a guilty plea of manslaughter in the first 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 manslaughter in the first degree (Penal Law § 125.20 [4]). As defendant contends and the People correctly concede, defendant's purported waiver of the right to appeal is invalid inasmuch as both the signed written waiver and the oral waiver colloquy mischaracterized the nature of the right to appeal, and therefore we are not precluded from reviewing his challenge to the severity of the sentence (*see People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Irwin*, 232 AD3d 1251, 1251 [4th Dept 2024]; *People v Cossette*, 199 AD3d 1397, 1398 [4th Dept 2021], *lv denied* 37 NY3d 1160 [2022]). Nonetheless, we conclude that the sentence is not unduly harsh or severe. We have reviewed defendant's remaining contention and conclude that it does not warrant modification or reversal of the judgment.

Entered: July 25, 2025

Ann Dillon Flynn
Clerk of the Court