

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

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KA 22-01646

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID DIAZ, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (JAMES A. HOBBS OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (RYAN P. ASHE OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Judith A. Sinclair, J.), rendered September 6, 2022. The judgment convicted defendant, upon a plea of guilty, of assault in the first degree and reckless assault of a child.

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

Memorandum: On appeal from a judgment convicting him, upon his plea of guilty, of assault in the first degree (Penal Law § 120.10 [3]) and reckless assault of a child (§ 120.02), defendant contends that his waiver of the right to appeal is invalid and his sentence is unduly harsh and severe. We affirm. Defendant knowingly, voluntarily, and intelligently waived his right to appeal (*see generally People v Thomas*, 34 NY3d 545, 559-564 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]) and that waiver encompasses his challenge to the severity of the sentence (*see People v Lopez*, 6 NY3d 248, 255 [2006]; *People v Hidalgo*, 91 NY2d 733, 737 [1998]).

Entered: October 10, 2025

Ann Dillon Flynn
Clerk of the Court