

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

775

KA 18-01538

PRESENT: CURRAN, J.P., BANNISTER, OGDEN, DELCONTE, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BRANDON M. ANDERSON, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (PAUL SKIP LAISURE OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MERIDETH H. SMITH OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered May 14, 2018. The judgment convicted defendant upon his plea of guilty of attempted criminal possession of a weapon in the second degree.

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

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of attempted criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]). In appeal No. 2, he appeals from a judgment convicting him upon his plea of guilty of attempted criminal possession of a weapon in the second degree (§§ 110.00, 265.03 [3]).

With respect to appeal No. 1, as the People correctly concede, defendant's waiver of the right to appeal is invalid because Supreme Court's colloquy "used overbroad language that mischaracterized the waiver as an absolute bar to the taking of an appeal" (*People v Jones*, 236 AD3d 1410, 1410 [4th Dept 2025] [internal quotation marks omitted]; see *People v Thomas*, 34 NY3d 545, 565-566 [2019], cert denied – US –, 140 S Ct 2634 [2020]; *People v Green*, 227 AD3d 1372, 1372 [4th Dept 2024], lv denied 42 NY3d 926 [2024]). We are therefore not precluded from reviewing defendant's challenge to the severity of his sentence. Nevertheless, we reject defendant's contention, in appeal No. 1, that the sentence is unduly harsh and severe.

In appeal No. 2, defendant raises no contentions with respect to the judgment, except to contend that he did not validly waive his right to appeal. Given the absence of any contentions that the judgment should be reversed or modified, we conclude that defendant's

contention regarding the validity of his waiver of the right to appeal is academic, and we therefore dismiss the appeal from the judgment in appeal No. 2 (see *People v Lewis*, 232 AD3d 1316, 1316 [4th Dept 2024]; *People v Parrilla*, 227 AD3d 1419, 1419-1420 [4th Dept 2024]; see generally *People v Montreal* [appeal No. 2], 213 AD3d 1255, 1256 [4th Dept 2023]).