

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

827

KA 22-00560

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARIUS L. JONES, ALSO KNOWN AS DARIUS JONES,
ALSO KNOWN AS DARIUS LAMAR JONES,
DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KERRY A. CONNER OF
COUNSEL), FOR DEFENDANT-APPELLANT.

KEVIN T. FINNELL, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Charles N. Zambito, J.), rendered August 24, 2021. The judgment convicted defendant, upon a plea of guilty, 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 his plea of guilty, of attempted criminal possession of a controlled substance in the third degree (Penal Law §§ 110.00, 220.16 [1]). Contrary to defendant's contention, County Court did not mischaracterize the waiver of the right to appeal as "an absolute bar to the taking of a first-tier direct appeal" (*People v Thomas*, 34 NY3d 545, 558 [2019], cert denied – US –, 140 S Ct 2634 [2020]). Instead, the court "followed the model colloquy nearly verbatim" (*People v Figueroa*, 230 AD3d 1581, 1582 [4th Dept 2024], lv denied 42 NY3d 1079 [2025]), and explained to defendant that he was "not actually giving up the right to file a notice of appeal" and that "there are certain issues that still can be raised" after a waiver of the right to appeal, including the voluntariness of the plea and the legality of the sentence (see *People v Brinson*, 240 AD3d 1376, 1377 [4th Dept 2025]; *People v Edmonds*, 229 AD3d 1275, 1277 [4th Dept 2024], lv denied 43 NY3d 930 [2025]). Defendant's subsequent refusal to sign a written waiver of the right to appeal is of no moment where, as here, "the oral waiver was adequate" (*People v Thomas*, 237 AD3d 1557, 1558 [4th Dept 2025], lv denied 43 NY3d 1059 [2025] [internal quotation marks omitted]; see *People v Lopez*, 6 NY3d 248, 257 [2006]).

Defendant's waiver encompasses his challenge to the severity of the sentence (*see Lopez*, 6 NY3d at 255; *People v Hidalgo*, 91 NY2d 733, 737 [1998]).