

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

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**KA 23-00669**

PRESENT: WHALEN, P.J., LINDLEY, CURRAN, SMITH, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JERRY STUDER, DEFENDANT-APPELLANT.

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

TODD C. CARVILLE, DISTRICT ATTORNEY, UTICA (MICHAEL A. LABELLA OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Oneida County Court (Robert Bauer, J.), rendered January 27, 2023. The judgment convicted defendant, upon a guilty plea, of rape 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 a plea of guilty, of rape in the first degree (Penal Law § 130.35 [former (4)]). Even assuming, *arguendo*, that defendant's waiver of the right to appeal is invalid (*see People v Simmonds*, 239 AD3d 1326, 1326 [4th Dept 2025]; *see generally People v Thomas*, 34 NY3d 545, 564-566 [2019], *cert denied* 589 US 1302 [2020]) and thus does not preclude our review of his challenge to the severity of the sentence (*see People v Mendoza*, 37 NY3d 1075, 1076 [2021]), we nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: March 27, 2026

Ann Dillon Flynn  
Clerk of the Court