

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

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KA 24-00432

PRESENT: WHALEN, P.J., BANNISTER, MONTOUR, GREENWOOD, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHNATHAN RZOSKA, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. KEANE, DISTRICT ATTORNEY, BUFFALO (PAUL J. WILLIAMS, III, OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Suzanne Maxwell Barnes, J.), rendered February 15, 2024. The judgment convicted defendant upon his plea of guilty of making a terroristic threat (two counts), criminal contempt in the first degree, tampering with a witness in the third degree and aggravated harassment in the second degree.

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, inter alia, two counts of making a terroristic threat (Penal Law § 490.20 [1]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid and therefore does not preclude our review of his challenge to the severity of his sentence (*see People v Swiderski*, 217 AD3d 1416, 1417 [4th Dept 2023]), we conclude that the sentence is not unduly harsh or severe.

Entered: June 5, 2026

Ann Dillon Flynn
Clerk of the Court