

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

1035

KA 20-00249

PRESENT: SMITH, J.P., CARNI, NEMOYER, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TRAVIS CARTER, DEFENDANT-APPELLANT.

CHRISTINE M. COOK, SYRACUSE, FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER, JR., OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (James H. Cecile, A.J.), rendered January 7, 2020. The judgment convicted defendant upon a plea of guilty of grand larceny in the third degree.

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

Memorandum: On appeal from a judgment convicting him upon a plea of guilty of grand larceny in the third degree (Penal Law § 155.35 [1]), defendant contends that the sentence imposed is unduly harsh and severe and that the waiver of the right to appeal does not foreclose his challenge to the severity of the sentence. We agree with defendant that he did not validly waive his right to appeal "because County Court's oral colloquy utterly mischaracterized the nature of the right to appeal . . . , inasmuch as the court's advisement as to the rights relinquished [and retained by defendant] was incorrect and irredeemable under the circumstances" (*People v Crogan*, 181 AD3d 1212, 1212 [4th Dept 2020], *lv denied* 35 NY3d 1026 [2020] [internal quotation marks omitted]; see *People v Thomas*, 34 NY3d 545, 562, 565 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Wiggins*, 196 AD3d 1067, 1067-1068 [4th Dept 2021]). We nevertheless perceive no basis in the record for the exercise of our authority to reduce the sentence as a matter of discretion in the interest of justice (see CPL 470.15 [6] [b]).

Entered: December 23, 2021

Ann Dillon Flynn
Clerk of the Court