

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

1145

KA 19-00698

PRESENT: WHALEN, P.J., SMITH, NEMOYER, AND CURRAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ELUID MANSO, DEFENDANT-APPELLANT.

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

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (John L. Michalski, A.J.), rendered January 29, 2019. The judgment convicted defendant upon his plea of guilty of attempted criminal sale of a controlled substance 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 his plea of guilty of attempted criminal sale of a controlled substance in the third degree (Penal Law §§ 110.00, 220.39 [1]), defendant contends that he did not validly waive his right to appeal 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 Hemphill*, 192 AD3d 1479, 1480 [4th Dept 2021]; *People v Alls*, 187 AD3d 1515, 1515 [4th Dept 2020]; *People v Love*, 181 AD3d 1193, 1193 [4th Dept 2020]), we conclude that the sentence is not unduly harsh or severe.

Entered: February 4, 2022

Ann Dillon Flynn
Clerk of the Court