

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

487

KA 17-02138

PRESENT: LINDLEY, J.P., NEMOYER, CURRAN, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

REYNALDO MELENDEZ, JR., ALSO KNOWN AS JOHN DOE,
DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DREW R. DUBRIN OF
COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County
(Judith A. Sinclair, J.), rendered October 23, 2017. The judgment
convicted defendant, upon his plea of guilty, of course of sexual
conduct against a child 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 his plea of guilty, of course of sexual conduct against a child
in the first degree (Penal Law § 130.75 [1] [b]). As defendant
contends and the People correctly concede, the record does not
establish that defendant validly waived his right to appeal. Here,
the rights encompassed by defendant's purported waiver of the right to
appeal "were mischaracterized during the oral colloquy and in [the]
written form[] executed by defendant[], which indicated the waiver was
an absolute bar to direct appeal, failed to signal that any issues
survived the waiver and . . . advised that the waiver encompassed
'collateral relief on certain nonwaivable issues in both state and
federal courts' " (*People v Bisonso*, 36 NY3d 1013, 1017-1018 [2020],
quoting *People v Thomas*, 34 NY3d 545, 566 [2019], cert denied – US –,
140 S Ct 2634 [2020]; see *People v Montgomery*, 191 AD3d 1418,
1418-1419 [4th Dept 2021], lv denied 36 NY3d 1122 [2021]). We
conclude that defendant's purported waiver is not enforceable inasmuch
as the totality of the circumstances fails to reveal that defendant
"understood the nature of the appellate rights being waived" (*Thomas*,
34 NY3d at 559; see *People v Fontanez-Baez*, 195 AD3d 1448, 1449 [4th
Dept 2021], lv denied 37 NY3d 971 [2021]; *Montgomery*, 191 AD3d at
1419). Although we are thus not precluded from reviewing defendant's
challenge to the severity of his sentence (see *Montgomery*, 191 AD3d at
1419), we nevertheless conclude that the sentence is not unduly harsh

or severe.

Entered: June 3, 2022

Ann Dillon Flynn
Clerk of the Court