

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

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KA 21-00940

PRESENT: SMITH, J.P., LINDLEY, CURRAN, BANNISTER, AND MONTOUR, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ADAM J. COLBERT, DEFENDANT-APPELLANT.

KEEM APPEALS, PLLC, SYRACUSE (BRADLEY E. KEEM OF COUNSEL), FOR
DEFENDANT-APPELLANT.

GREGORY S. OAKES, DISTRICT ATTORNEY, OSWEGO (AMY L. HALLENBECK OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oswego County Court (Walter W. Hafner, Jr., J.), rendered January 7, 2021. The judgment convicted defendant upon a plea of guilty of driving while intoxicated, as a class E felony.

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 driving while intoxicated as a class E felony (Vehicle and Traffic Law §§ 1192 [3]; 1193 [1] [c] [i]), 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 the sentence (*see People v Lopez*, 6 NY3d 248, 256 [2006]; *People v Henry*, 207 AD3d 1062, 1062-1063 [4th Dept 2022], *lv denied* 39 NY3d 940 [2022]), we conclude that the sentence is not unduly harsh or severe.

Entered: February 3, 2023

Ann Dillon Flynn
Clerk of the Court