

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

885

KA 20-00262

PRESENT: LINDLEY, J.P., CURRAN, MONTOUR, OGDEN, AND NOWAK, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TOMMY HALL, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (CLEA WEISS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Victoria M. Argento, J.), rendered January 30, 2020. The judgment convicted defendant upon a guilty plea of manslaughter 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 manslaughter in the first degree (Penal Law § 125.20 [1]). We affirm. Initially, as defendant contends and the People correctly concede, defendant's waiver of the right to appeal is invalid because Supreme Court "mischaracterized the nature of the right that defendant was being asked to cede, portraying the waiver as an absolute bar to defendant taking an appeal, and there was no clarification that appellate review remained available for certain issues" (*People v Hussein*, 192 AD3d 1705, 1706 [4th Dept 2021], lv denied 37 NY3d 965 [2021]; see *People v Thomas*, 34 NY3d 545, 565-566 [2019], cert denied – US –, 140 S Ct 2634 [2020]; *People v Jackson*, 207 AD3d 1077, 1077-1078 [4th Dept 2022], lv denied 38 NY3d 1151 [2022]).

To the extent that defendant's contention that he was denied effective assistance of counsel at sentencing survives his guilty plea, we conclude that it lacks merit (see *People v Smith*, 144 AD3d 1547, 1548 [4th Dept 2016]). Here, "[d]efendant was sentenced in accordance with the plea agreement, and any alleged deficiencies in defense counsel's representation at sentencing do not constitute ineffective assistance" (*People v Gregg*, 107 AD3d 1451, 1452 [4th 2013]; see *Smith*, 144 AD3d at 1548; see generally *People v Rivera*, 71 NY2d 705, 708-709 [1988]).

We further conclude that the court did not abuse its discretion in declining to adjudicate defendant a youthful offender, particularly in view of the serious nature of the crime (see *People v Graham*, 218 AD3d 1359, 1360 [4th Dept 2023]; see generally *People v McCall*, 187 AD3d 1682, 1683 [4th Dept 2020], lv denied 36 NY3d 930 [2020]; *People v Lester*, 167 AD3d 1559, 1560 [4th Dept 2018], lv denied 32 NY3d 1206 [2019]). In addition, having reviewed the applicable factors pertinent to a youthful offender determination (see *People v Keith B.J.*, 158 AD3d 1160, 1160 [4th Dept 2018]), we decline to exercise our interest of justice jurisdiction to grant him that status (see *People v Shrubbsall*, 167 AD2d 929, 930 [4th Dept 1990]; cf. *Keith B.J.*, 158 AD3d at 1161). Finally, the sentence is not unduly harsh or severe.