

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

1005

**KA 20-00417**

PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, GREENWOOD, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BENJAMIN SANTIAGO, JR., ALSO KNOWN AS BENJAMIN SANTIAGO, ALSO KNOWN AS BENJAMIN J. SANTIAGO, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BRAEDAN GILLMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

KEVIN T. FINNELL, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Genesee County Court (Charles N. Zambito, J.), rendered December 19, 2019. The judgment convicted defendant upon a plea of guilty of robbery in the first degree (two counts), assault in the first degree, grand larceny in the fourth degree, petit larceny (two counts), burglary in the second degree, and 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 his guilty plea of two counts of robbery in the first degree (Penal Law § 160.15 [1], [3]) and one count of assault in the first degree (§ 120.10 [1]), among other offenses, defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. As the People correctly concede, the waiver of the right to appeal is invalid (*see People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Hughes*, 199 AD3d 1332, 1333 [4th Dept 2021]).

We nevertheless conclude that the sentence imposed by County Court is not unduly harsh or severe.

Entered: December 22, 2023

Ann Dillon Flynn  
Clerk of the Court