

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

820

**KA 12-01918**

PRESENT: CENTRA, J.P., FAHEY, CARNI, LINDLEY, AND VALENTINO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIAM P. OLIVER, DEFENDANT-APPELLANT.

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WILLIAMS, HEINL, MOODY & BUSCHMAN, P.C., AUBURN (MARIO J. GUTIERREZ OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM P. OLIVER, DEFENDANT-APPELLANT PRO SE.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (NATHAN J. GARLAND OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered August 16, 2012. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the third 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 criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]). We reject defendant's contention in his main brief that the sentence is unduly harsh and severe. By pleading guilty, defendant waived the contention in his pro se supplemental brief that count three of the indictment is barred by the statute of limitations (*see People v Parilla*, 8 NY3d 654, 659; *see generally* CPL 210.20 [1] [f]). Defendant's further contention in his pro se supplemental brief that he was improperly denied the opportunity to participate in the judicial diversion program set forth in CPL 216.05 is not preserved for our review (*see* CPL 470.05 [2]), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see* CPL 470.15 [3] [c]).

Entered: July 3, 2014

Frances E. Cafarell  
Clerk of the Court