

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

798

KA 12-01110

PRESENT: SMITH, J.P., CENTRA, CARNI, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIAM MCCLURE, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KRISTIN M. PREVE OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (DONNA A. MILLING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Penny M. Wolfgang, J.), rendered July 20, 2011. The judgment convicted defendant, upon his plea of guilty, of attempted burglary in the second 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 attempted burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]). We agree with defendant that the waiver of the right to appeal does not encompass his challenge to the severity of the sentence imposed "inasmuch as there is no indication in the record of the plea allocution that defendant was waiving his right to appeal the severity of the sentence[]" (*People v Doblinger*, 117 AD3d 1484, 1485; see *People v Maracle*, 19 NY3d 925, 928). We nevertheless conclude that the sentence is not unduly harsh or severe.

Entered: July 11, 2014

Frances E. Cafarell
Clerk of the Court