

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

1428

KA 12-02265

PRESENT: SCUDDER, P.J., CENTRA, CARNI, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIE MARTIN, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (CLAIRE H. FORTIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (ASHLEY R. SMALL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Christopher J. Burns, J.), rendered October 22, 2012. The judgment convicted defendant, upon his plea of guilty, of attempted robbery in the second degree.

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 attempted robbery in the second degree (Penal Law §§ 110.00, 160.10 [2] [b]), defendant contends that the waiver of the right to appeal is invalid and challenges the severity of the sentence. Although defendant knowingly, voluntarily and intelligently waived the right to appeal (*see generally People v Lopez*, 6 NY3d 248, 256), we nevertheless agree with defendant that the waiver does not preclude his challenge to the severity of the sentence. "While it is evident that defendant waived [his] right to appeal [his] conviction, there is no indication in the record that defendant waived the right to appeal the harshness of [his] sentence" (*People v Maracle*, 19 NY3d 925, 928; *see People v Peterson*, 111 AD3d 1412, 1412). On the merits, we conclude that the sentence is not unduly harsh or severe.

Entered: January 2, 2015

Frances E. Cafarell
Clerk of the Court