

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

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KA 14-01672

PRESENT: PERADOTTO, J.P., CARNI, CURRAN, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAMIEN D. JOST, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (SUSAN C. MINISTERO OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered June 30, 2014. The judgment convicted defendant, upon his plea of guilty, of disseminating indecent materials to minors 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 disseminating indecent materials to minors in the first degree (Penal Law § 235.22). We conclude that County Court did not abuse its discretion in refusing to grant defendant youthful offender status (*see People v Jackson*, 126 AD3d 1508, 1511-1512). In addition, under the circumstances of this case, including defendant's prior adjudication for similar conduct, we decline to exercise our interest of justice jurisdiction to adjudicate defendant a youthful offender (*see e.g. People v Potter*, 13 AD3d 1191, 1191, *lv denied* 4 NY3d 889; *cf. People v Shruballs*, 167 AD2d 929, 929-931). Finally, we reject defendant's contention that the sentence is unduly harsh and severe.

Entered: July 1, 2016

Frances E. Cafarell
Clerk of the Court