

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

927

KA 15-00940

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARCELLUS J. PIERCE, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (NICHOLAS T. TEXIDO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Thomas P. Franczyk, J.), rendered September 16, 2014. The judgment convicted defendant, upon his plea of guilty, of attempted robbery in the third degree and grand larceny in the fourth 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 robbery in the third degree (Penal Law §§ 110.00, 160.05) and grand larceny in the fourth degree (§ 155.30 [8]). Contrary to defendant's contention, we conclude that "[t]he plea colloquy and the written waiver of the right to appeal signed [and acknowledged in County Court] by defendant demonstrate that [he] knowingly, intelligently and voluntarily waived the right to appeal," including the right to appeal the severity of the sentence (*People v Farrara*, 145 AD3d 1527, 1527 [internal quotation marks omitted]; see *People v Ramos*, 7 NY3d 737, 738). Defendant's valid waiver forecloses his challenge to the severity of the sentence (see *People v Lopez*, 6 NY3d 248, 255-256; cf. *People v Maracle*, 19 NY3d 925, 928).

Entered: June 30, 2017

Frances E. Cafarell
Clerk of the Court