

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

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KA 15-02039

PRESENT: SMITH, J.P., CENTRA, PERADOTTO, DEJOSEPH, AND CURRAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MATTHEW W. ECK, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (TIMOTHY P. MURPHY OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael L. D'Amico, J.), rendered November 7, 2014. The judgment convicted defendant, upon his plea of guilty, of attempted murder in the second degree (two counts).

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 two counts of attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]). As the People correctly concede, defendant's waiver of the right to appeal is invalid because it was not knowing, voluntary and intelligent (see *People v Brown*, 296 AD2d 860, 860 [4th Dept 2002], *lv denied* 98 NY2d 767 [2002]; see also *People v Maracle*, 19 NY3d 925, 928-929 [2012]). Contrary to defendant's contention, however, we conclude that the sentence is not unduly harsh or severe.

Entered: March 16, 2018

Mark W. Bennett
Clerk of the Court