

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

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KA 16-00888

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BRANDON M. WEIG, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (MICHAEL S. DEAL OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (SHIRLEY A. GORMAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered November 9, 2015. The judgment convicted defendant, upon his plea of guilty, of assault 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 assault in the second degree (Penal Law § 120.05 [9]). Contrary to his contention, defendant validly waived his right to appeal. County Court "did not improperly conflate the waiver of the right to appeal with those rights automatically forfeited by a guilty plea" (*People v Mills*, 151 AD3d 1744, 1745 [4th Dept 2017], *lv denied* 29 NY3d 1131 [2017] [internal quotation marks omitted]; *see People v Lopez*, 6 NY3d 248, 256 [2006]). Furthermore, the court "engaged defendant 'in an adequate colloquy to ensure that the waiver of the right to appeal was a knowing and voluntary choice' " (*Mills*, 151 AD3d at 1745). The valid waiver of the right to appeal encompasses defendant's challenge to the severity of the sentence (*see Lopez*, 6 NY3d at 255; *Mills*, 151 AD3d at 1745).

Entered: March 16, 2018

Mark W. Bennett
Clerk of the Court