

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

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KA 15-00204

PRESENT: CENTRA, J.P., CARNI, NEMOYER, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD LIVINGSTON, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (JOHN J. GILSENAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

RICHARD LIVINGSTON, DEFENDANT-APPELLANT PRO SE.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (James H. Cecile, A.J.), rendered November 25, 2014. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third 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 criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]). Preliminarily, we agree with defendant that he did not validly waive his right to appeal (*see People v Sampson*, 149 AD3d 1486, 1486-1487 [4th Dept 2017]; *People v Mason*, 144 AD3d 1589, 1589 [4th Dept 2016], *lv denied* 28 NY3d 1186 [2017]). Nevertheless, the sentence is not unduly harsh or severe. We have considered the contentions in defendant's pro se supplemental brief and conclude that none warrants reversal or modification of the judgment.

Entered: March 16, 2018

Mark W. Bennett
Clerk of the Court