

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

1126

KA 15-01593

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD L. DEWITT, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA, D.J. & J.A. CIRANDO, ESQS.,
SYRACUSE (BRADLEY E. KEEM OF COUNSEL), FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (V. CHRISTOPHER
EAGGLESTON OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (William F. Kocher, J.), entered July 1, 2015. The judgment convicted defendant, upon his plea of guilty, of aggravated unlicensed operation of a motor vehicle in the first degree and driving while intoxicated.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of aggravated unlicensed operation of a motor vehicle in the first degree (Vehicle and Traffic Law § 511 [3] [a] [i]) and misdemeanor driving while intoxicated (§§ 1192 [3]; 1193 [1] [b] [i]) and, in appeal No. 2, he appeals from a judgment convicting him upon his plea of guilty of reckless endangerment in the first degree (Penal Law § 120.25). The pleas were taken during one proceeding. Contrary to defendant's contention in both appeals, he knowingly, voluntarily, and intelligently waived his right to appeal (*see People v Lopez*, 6 NY3d 248, 256 [2006]; *People v Rodriguez*, 156 AD3d 1433, 1433 [4th Dept 2017], *lv denied* 30 NY3d 1119 [2018]). That waiver encompasses defendant's challenges in both appeals to the factual sufficiency of the plea allocution (*see Rodriguez*, 156 AD3d at 1434), and the severity of the sentence (*see People v Hidalgo*, 91 NY2d 733, 737 [1998]). Contrary to defendant's further contention in both appeals, he voluntarily, knowingly, and intelligently waived participation in the shock incarceration program (*see generally* Correction Law § 865; *Lopez*, 6 NY3d at 256).

Entered: November 16, 2018

Mark W. Bennett
Clerk of the Court