

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

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KA 16-02161

PRESENT: WHALEN, P.J., LINDLEY, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SEAN TIMMONS, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (SARA A. GOLDFARB OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER, JR., OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Thomas J. Miller, J.), rendered October 14, 2016. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the fourth degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of grand larceny in the fourth degree (Penal Law § 155.30 [1]), defendant contends that his waiver of the right to appeal is invalid and that his enhanced sentence, imposed after he was arrested for robbery during his release pending sentencing, is unduly harsh and severe. Contrary to defendant's contention, the record establishes that he validly waived his right to appeal (*see People v Curtis*, 162 AD3d 1758, 1758 [4th Dept 2018], *lv denied* 32 NY3d 1003 [2018]; *People v Lefler*, 159 AD3d 1427, 1427 [4th Dept 2018], *lv denied* 31 NY3d 1118 [2018]). "[E]ven assuming, arguendo, that defendant's challenge to the severity of his sentence is not encompassed by his valid waiver of the right to appeal" (*People v Weatherbee*, 147 AD3d 1526, 1526 [4th Dept 2017], *lv denied* 29 NY3d 1038 [2017]; *see People v Watson*, 169 AD3d 1526, 1528 [4th Dept 2019]; *People v Huggins*, 45 AD3d 1380, 1380-1381 [4th Dept 2007], *lv denied* 9 NY3d 1006 [2007]), we perceive no basis in the record to exercise our power to modify the sentence as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [b]*).

Entered: April 26, 2019

Mark W. Bennett
Clerk of the Court