

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

1084

KA 17-01302

PRESENT: SMITH, J.P., CARNI, LINDLEY, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSHUA L. MILLER, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KAIXI XU OF COUNSEL),
FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (SUSAN M. HOWARD OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered October 17, 2016. The judgment convicted defendant upon his plea of guilty of attempted criminal possession of a controlled substance 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 attempted criminal possession of a controlled substance in the second degree (Penal Law §§ 110.00, 220.18 [2]). We reject defendant's contention that his waiver of the right to appeal was invalid. The plea colloquy establishes that defendant knowingly, voluntarily, and intelligently waived the right to appeal (*see generally People v Lopez*, 6 NY3d 248, 256 [2006]). Inasmuch as defendant's valid waiver of the right to appeal specifically included a waiver of the right to challenge the severity of the sentence and defendant was informed of "the maximum sentence [County Court] could impose in its discretion," the waiver encompasses his challenge to the severity of his sentence (*People v Lococo*, 92 NY2d 825, 827 [1998]; *see People v Lasher*, 151 AD3d 1774, 1775 [4th Dept 2017], *lv denied* 29 NY3d 1129 [2017]). Defendant's valid waiver of the right to appeal likewise encompasses his challenges to the court's suppression ruling (*see People v Antonio J.*, 173 AD3d 1743, 1744 [4th Dept 2019]; *People v Brand*, 112 AD3d 1320, 1321 [4th Dept 2013], *lv denied* 23 NY3d 961 [2014]).

Entered: November 15, 2019

Mark W. Bennett
Clerk of the Court