

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

994

KA 18-01614

PRESENT: CARNI, J.P., LINDLEY, CURRAN, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEFFREY L. BARR, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JAMES M. SPECYAL OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (ROBERT J. SHOEMAKER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Charles N. Zambito, J.), rendered August 13, 2018. The judgment convicted defendant, upon a plea of guilty, of assault in the first 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 first degree (Penal Law § 120.10 [1]). Contrary to defendant's initial contention, the Court of Appeals has rejected the assertion that waivers of the right to appeal should be invalid per se (see *People v Thomas*, 34 NY3d 545, 557-558, 558 n 1 [2019], cert denied – US –, 140 S Ct 2634 [2020]; *People v Seaberg*, 74 NY2d 1, 8-9 [1989]). Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid and therefore does not preclude our review of his challenge to the severity of his sentence (see *People v Viehdeffer*, 189 AD3d 2143, 2144 [4th Dept 2020]; *People v Love*, 181 AD3d 1193, 1193 [4th Dept 2020]), we conclude that the sentence is not unduly harsh or severe. Furthermore, we conclude that County Court did not abuse its discretion in refusing to grant defendant youthful offender status (see *People v Rice*, 175 AD3d 1826, 1826 [4th Dept 2019], lv denied 34 NY3d 1132 [2020]; *People v Macon*, 169 AD3d 1439, 1440 [4th Dept 2019], lv denied 33 NY3d 978 [2019]), and we decline to exercise our discretion in the interest of justice to adjudicate defendant a youthful offender (see *Rice*, 175 AD3d at 1826).

Entered: March 19, 2021

Mark W. Bennett
Clerk of the Court