

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

428

KA 19-00214

PRESENT: SMITH, J.P., PERADOTTO, NEMOYER, CURRAN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ELIJAH CURTIS, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (THOMAS M. LEITH 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 (James H. Cecile, A.J.), rendered November 13, 2018. The judgment convicted defendant upon a plea of guilty of criminal possession of a controlled substance in the third degree, criminal possession of a controlled substance in the fourth degree, criminal possession of a controlled substance in the seventh degree and criminal possession of marihuana in the fifth 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, inter alia, criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]). The People correctly concede that defendant did not validly waive his right to appeal (*see People v Clark*, 178 AD3d 1409, 1410 [4th Dept 2019], *lv denied* 34 NY3d 1157 [2020]; *People v Coats*, 158 AD3d 1296, 1297 [4th Dept 2018], *lv denied* 31 NY3d 1080 [2018]). Contrary to defendant's contention, however, the sentence is not unduly harsh or severe. We are nevertheless "compelled to emphasize once again" that, contrary to the assertion in the People's brief, a criminal defendant need not show extraordinary circumstances or an abuse of discretion by the sentencing court in order to obtain a sentence reduction under CPL 470.15 (6) (b) (*People v Cutaia*, 167 AD3d 1534, 1535 [4th Dept 2018], *lv denied* 33 NY3d 947 [2019]; *see People v Thomas*, 194 AD3d 1405, 1406 [4th Dept 2021]; *People v Kibler*, 187 AD3d 1569, 1570 [4th Dept 2020]). Finally, both the certificate of conviction and the uniform sentence and commitment form must be corrected to reflect County Court's imposition of a three-year, not a two-year, period of

postrelease supervision on count one.

Entered: July 16, 2021

Mark W. Bennett
Clerk of the Court