

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

**956**

**KA 20-00598**

PRESENT: WHALEN, P.J., SMITH, LINDLEY, CURRAN, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARCUS COSSETTE, DEFENDANT-APPELLANT.

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PETER J. DIGIORGIO, JR., UTICA, FOR DEFENDANT-APPELLANT.

MARCUS COSSETTE, DEFENDANT-APPELLANT PRO SE.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered August 12, 2019. The judgment convicted defendant upon a plea of guilty of criminal sexual act 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 criminal sexual act in the first degree (Penal Law § 130.50 [3]). As an initial matter, we conclude that defendant's waiver of the right to appeal is invalid inasmuch as both the signed written waiver of the right to appeal and the oral waiver colloquy mischaracterized the nature of the right to appeal (see *People v Thomas*, 34 NY3d 545, 565-566 [2019], cert denied – US –, 140 S Ct 2634 [2020]; *People v Jones*, 186 AD3d 1069, 1070 [4th Dept 2020]).

Defendant contends in his pro se supplemental brief that the evidence is legally insufficient to support the conviction. However, defendant forfeited that contention by pleading guilty (see *People v Weakfall*, 151 AD3d 1966, 1966 [4th Dept 2017]; *People v Feidner*, 109 AD3d 1086, 1086 [4th Dept 2013]). Indeed, "it would be logically inconsistent to permit a defendant to enter a plea of guilty based on particular admitted facts, yet to allow that defendant contemporaneously to reserve the right to challenge on appeal the sufficiency of those facts to support a conviction, had there been a trial" (*People v Plunkett*, 19 NY3d 400, 405-406 [2012]). Further, defendant's challenge in his pro se supplemental brief to the weight of the evidence is " 'inapplicable' inasmuch as he was convicted upon his plea of guilty, rather than upon a verdict following a trial"

(*Feidner*, 109 AD3d at 1086; *cf. People v Danielson*, 9 NY3d 342, 349 [2007]).

Contrary to defendant's contentions in his main and pro se supplemental briefs, we conclude that the sentence is not unduly harsh or severe. We have considered the remaining contentions in defendant's pro se supplemental brief and conclude that none warrants modification or reversal of the judgment.

Entered: November 12, 2021

Ann Dillon Flynn  
Clerk of the Court