

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

**2**

**KA 19-00975**

PRESENT: WHALEN, P.J., NEMOYER, CURRAN, WINSLOW, AND BANNISTER, JJ.

---

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

OSVALDO MONTALVO-SANTIAGO, DEFENDANT-APPELLANT.

---

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MINDY F. VANLEUVAN OF COUNSEL), FOR RESPONDENT.

---

Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered April 9, 2019. The judgment convicted defendant, upon a plea of guilty, of attempted course of sexual conduct against a child 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 attempted course of sexual conduct against a child in the first degree (Penal Law §§ 110.00, 130.75 [1] [a]). As defendant contends and the People correctly concede, defendant did not validly waive his right to appeal (*see People v Thomas*, 34 NY3d 545, 565-566, *cert denied* – US –, 140 S Ct 2634 [2020]). The sentence, however, is not unduly harsh or severe.

Entered: January 28, 2022

Ann Dillon Flynn  
Clerk of the Court