

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

1121

KA 19-01168

PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID SEAY, DEFENDANT-APPELLANT.

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

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Deborah A. Haendiges, J.), rendered February 6, 2019. The judgment convicted defendant upon a plea of guilty of criminal contempt in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of criminal contempt in the first degree (Penal Law § 215.51 [b] [v]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe. Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid and thus does not preclude our review of his challenge to the severity of the sentence (*see People v Alls*, 187 AD3d 1515, 1515 [4th Dept 2020]), we conclude that the sentence is not unduly harsh or severe.

We note, however, that the certificate of conviction incorrectly reflects that defendant was sentenced to an indeterminate term of imprisonment of 3 1/3 to 4 years, and it must be amended to reflect that he was sentenced to an indeterminate term of imprisonment of 1 1/3 to 4 years (*see People v Massey*, 173 AD3d 1801, 1805 [4th Dept 2019]).

Entered: January 28, 2022

Ann Dillon Flynn
Clerk of the Court