

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

437

KA 18-01091

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, CURRAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JASON M. CURRY, DEFENDANT-APPELLANT.

JILL PAPERNO, ACTING PUBLIC DEFENDER, ROCHESTER (WILLIAM CLAUSS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DEREK HARNSBERGER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered March 26, 2018. The judgment convicted defendant, upon a plea of guilty, of attempted criminal possession of a weapon in the second 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 attempted criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe.

We initially note that defendant is subject to an undischarged period of postrelease supervision, and thus, contrary to the contention of the People, this appeal is not moot (*cf. People v Finch*, 137 AD3d 1653, 1655 [4th Dept 2016]; *People v Heatherly*, 132 AD3d 1277, 1279 [4th Dept 2015]).

We agree with defendant that, inasmuch as Supreme Court provided him with erroneous information about the scope of the waiver of the right to appeal and failed to identify that certain rights would survive the waiver, the colloquy was insufficient to ensure that he knowingly, voluntarily and intelligently waived his right to appeal (*see People v Thomas*, 34 NY3d 545, 564-568 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]). Nevertheless, the sentence is not unduly harsh or severe.

Entered: June 3, 2022

Ann Dillon Flynn
Clerk of the Court