

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

1074

KA 18-00870

PRESENT: SMITH, J.P., CARNI, LINDLEY, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES ERNST, DEFENDANT-APPELLANT.

MICHAEL J. STACHOWSKI, P.C., BUFFALO (MICHAEL J. STACHOWSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DANIEL J. PUNCH OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael F. Pietruszka, J.), rendered August 3, 2017. The judgment convicted defendant, upon his plea of guilty, of criminal sexual act in the first degree (two counts).

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 two counts of criminal sexual act in the first degree (Penal Law § 130.50 [4]). We agree with defendant that his waiver of the right to appeal does not encompass his challenge to the severity of his sentence (*see People v Fraisar*, 151 AD3d 1757, 1757 [4th Dept 2017], *lv denied* 29 NY3d 1127 [2017]). Nevertheless, we conclude that the sentence is not unduly harsh or severe.

Entered: November 8, 2019

Mark W. Bennett
Clerk of the Court