

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

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KA 12-02053

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, PERADOTTO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PERCY L. SCOTT, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BARBARA J. DAVIES OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered June 16, 2009. The appeal was held by this Court by order entered March 28, 2014, decision was reserved and the matter was remitted to Erie County Court for further proceedings (115 AD3d 1342). The proceedings were held and completed.

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 murder in the second degree (Penal Law §§ 110.00, 125.25 [1]). We conclude that County Court did not abuse its discretion in refusing to grant defendant youthful offender status (*see People v Johnson*, 109 AD3d 1191, 1191-1192, *lv denied* 22 NY3d 997; *People v Davis*, 84 AD3d 1710, 1710, *lv denied* 17 NY3d 815), and we decline to exercise our interest of justice jurisdiction to adjudicate defendant a youthful offender (*cf. People v Noel*, 106 AD2d 854, 854-855). Further, although defendant's valid waiver of the right to appeal does not encompass his challenge to the severity of the sentence because he entered the waiver before he was advised of the maximum sentence he could receive (*see People v Rizek* [appeal No. 1], 64 AD3d 1180, 1180, *lv denied* 13 NY3d 862), we nevertheless reject that challenge.

Entered: February 6, 2015

Frances E. Cafarell
Clerk of the Court