

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

People v. Hoffman

2021 NY Slip Op 00689 (App. Div. 2021) · No. 140 KA 18-01133 · Decided February 5, 2021

SUMMARY

The New York Supreme Court, Appellate Division, Fourth Department unanimously affirmed a judgment convicting Paul R. Hoffman, Jr., upon his guilty plea, of assault in the second degree. The court held that, even assuming the waiver of appeal was invalid, the defendant's sentence was not unduly harsh or severe.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Centra, J.P.; Lindley, J.; Curran, J.; Bannister, J.; DeJoseph, J.
JURISDICTION	New York
DECIDED	February 5, 2021
DOCKET	140 KA 18-01133
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Genesee County Court convicting him, upon his guilty plea, of assault in the second degree. He challenged the validity of his waiver of the right to appeal and the severity of his sentence.
STANDARD OF REVIEW	The court reviewed whether defendant's sentence was unduly harsh or severe; the opinion does not state a separate formal standard-of-review formulation.
PRECEDENTIAL VALUE	Published Appellate Division memorandum decision
PARTIES	Paul R. Hoffman, Jr., defendant-appellant v. The People of the State of New York, respondent

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- appellate jurisdiction

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

sentencing

QUESTIONS PRESENTED

1. Whether defendant's waiver of the right to appeal was valid and precluded review of the sentence.
2. Whether defendant's sentence for assault in the second degree was unduly harsh or severe.

HOLDINGS

1. The sentence was not unduly harsh or severe.

FACTUAL BACKGROUND

Defendant pleaded guilty to assault in the second degree under Penal Law § 120.05(2). The Genesee County Court rendered a judgment of conviction and sentence on January 26, 2018. On appeal, defendant contested the validity of his appeal waiver and argued that his sentence was unduly harsh and severe.

PROCEDURAL HISTORY

The Genesee County Court entered judgment on January 26, 2018, following defendant's guilty plea to assault in the second degree. Defendant appealed to the Appellate Division, Fourth Department, which unanimously affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- People v. Love, 181 A.D.3d 1193, 1193 (4th Dep't 2020)

OPINION

PER CURIAM.

People v Hoffman (2021 NY Slip Op 00689) People v Hoffman 2021 NY Slip Op 00689 Decided on February 5, 2021 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on February 5, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: CENTRA, J.P., LINDLEY, CURRAN, BANNISTER, AND DEJOSEPH, JJ. 140 KA 18-01133 [*1]THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, vPAUL R. HOFFMAN, JR., DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JANE I. YOON OF COUNSEL), FOR DEFENDANT-APPELLANT. LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (ROBERT J. SHOEMAKER OF COUNSEL), FOR RESPONDENT. Appeal from a judgment of the Genesee County Court (Charles N. Zambito, J.), rendered January 26, 2018.

The judgment convicted defendant, upon his plea of guilty, of assault 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 assault in the second degree (Penal Law § 120.05 [2]), 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 therefore does not preclude our review of his challenge to the severity of his sentence (see *People v Love*, 181 AD3d 1193, 1193 [4th Dept 2020]), we conclude that the sentence is not unduly harsh or severe. Entered: February 5, 2021 Mark W. Bennett Clerk of the Court