

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

People v. Souclat-Vega

2023 NY Slip Op 02231 (N.Y. Ct. App. 2023) · No. 322 KA 19-01435 · Decided April 28, 2023

SUMMARY

The Appellate Division, Fourth Department affirmed a judgment convicting Luis Souclat-Vega upon his guilty plea to assault in the second degree. The court held that the defendant's waiver of the right to appeal was invalid but concluded that the 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	Per Curiam; Smith, J.P.; Lindley, J.; Curran, J.; Montour, J.; Ogden, J.
JURISDICTION	New York
DECIDED	April 28, 2023
DOCKET	322 KA 19-01435
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment 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 Appellate Division reviewed whether defendant's sentence was unduly harsh or severe.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Luis Souclat-Vega, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

- sentencing
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate practice

QUESTIONS PRESENTED

1. Whether defendant's waiver of the right to appeal was valid and precluded appellate review of the sentence.
2. Whether defendant's sentence was unduly harsh or severe.

HOLDINGS

1. Defendant's waiver of the right to appeal was invalid and therefore did not preclude appellate review of his challenge to the severity of his sentence.
2. The sentence was not unduly harsh or severe.

FACTUAL BACKGROUND

Defendant pleaded guilty to assault in the second degree under Penal Law § 120.05(1). The Monroe County Court entered judgment and imposed the challenged sentence. On appeal, defendant disputed the validity of his appeal waiver and argued that the sentence was unduly harsh or severe.

PROCEDURAL HISTORY

The Monroe County Court, with Vincent M. Dinolfo, J., entered judgment on June 6, 2019, convicting defendant upon his plea of guilty of assault in the second degree. On appeal, the Appellate Division held that the waiver of the right to appeal was invalid but unanimously affirmed the judgment after concluding that the sentence was not unduly harsh or severe.

DISPOSITION

affirmed

CASES CITED

- People v. Thomas, 34 NY3d 545, 564-566 [2019], cert denied — US —, 140 S Ct 2634 [2020]
- People v. Hettig, 210 AD3d 1508, 1508-1509 [4th Dept 2022], lv denied 39 NY3d 1073 [2023]

OPINION

PER CURIAM.

People v Souclat-Vega (2023 NY Slip Op 02231) People v Souclat-vega 2023 NY Slip Op 02231 Decided on April 28, 2023 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 April 28, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: SMITH, J.P., LINDLEY, CURRAN, MONTOUR, AND OGDEN, JJ. 322 KA 19-01435 [*1]THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, vLUIS SOUCLAT-VEGA, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (TONYA PLANK OF COUNSEL), FOR DEFENDANT-APPELLANT. SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL), FOR RESPONDENT. Appeal from a judgment of the Monroe County Court (Vincent M. Dinolfo, J.), rendered June 6, 2019.

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 [1]), defendant contends that his waiver of the right to appeal is invalid and that his sentence is unduly harsh and severe.

As the People correctly concede, defendant's waiver of the right to appeal is invalid and thus does not preclude our review of his challenge to the severity of his sentence (see *People v Thomas*, 34 NY3d 545, 564-566 [2019], cert denied — US —, 140 S Ct 2634 [2020]; *People v Hettig*, 210 AD3d 1508, 1508-1509 [4th Dept 2022], lv denied 39 NY3d 1073 [2023]).

We nevertheless conclude that the sentence is not unduly harsh or severe. Entered: April 28, 2023
Ann Dillon Flynn Clerk of the Court