

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

998

KA 09-01887

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

COLLEEN PRATT, DEFENDANT-APPELLANT.

KATHLEEN P. REARDON, ROCHESTER, FOR DEFENDANT-APPELLANT.

JASON L. COOK, DISTRICT ATTORNEY, PENN YAN (ALLISON O'NEILL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Yates County Court (W. Patrick Falvey, J.), rendered September 1, 2009. The judgment convicted defendant, upon her plea of guilty, of grand larceny in the third degree and criminal possession of a forged instrument in the second degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting her upon her plea of guilty of one count of grand larceny in the third degree (Penal Law § 155.35) and two counts of criminal possession of a forged instrument in the second degree (§ 170.25). We reject the contention of defendant that her waiver of the right to appeal was not knowingly, voluntarily, and intelligently entered (*see People v Lopez*, 6 NY3d 248, 256). The responses of defendant to County Court's questions during the plea colloquy establish that she "understood that the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty," and that she voluntarily waived the right to appeal (*id.*; *see People v Tantaio*, 41 AD3d 1274, *lv denied* 9 NY3d 882). The valid waiver by defendant of the right to appeal encompasses her challenge to the severity of the sentence (*see id.* at 255). To the extent that the further contention of defendant that she was denied effective assistance of counsel survives her plea and valid waiver of the right to appeal (*see People v Boyzuck*, 72 AD3d 1530), we conclude that her contention lacks merit. Defendant "receive[d] an advantageous plea and nothing in the record casts doubt on the apparent effectiveness of counsel" (*People v Ford*, 86 NY2d 397, 404).

Finally, we reject the contention of defendant that the court erred in ordering that she pay a 10% surcharge pursuant to Penal Law § 60.27 (8) on the amount of restitution imposed, in light of the

evidence submitted by the Probation Department in support of the imposition of the surcharge (see § 60.27 [8]; CPL 420.10).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court