

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

542

KA 14-01074

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

VINCENT S. LONG, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (BRADLEY E. KEEM OF COUNSEL), FOR
DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JOHN C. TUNNEY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Marianne Furfure, A.J.), rendered February 13, 2014. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third degree.

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

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [12]). In appeal No. 2, defendant appeals from a judgment convicting him upon his *Alford* plea of criminal possession of a controlled substance in the third degree (§ 220.16 [1]) and, in appeal No. 3, he appeals from a judgment convicting him upon his *Alford* plea of bribing a witness (§ 215.00).

In appeal No. 1, defendant failed to preserve for our review his contention that the guilty plea was not knowingly, intelligently, and voluntarily entered inasmuch as he failed to move to withdraw the plea or to vacate the judgment of conviction on that ground (*see People v Zulian*, 68 AD3d 1731, 1732, *lv denied* 14 NY3d 894) and, contrary to defendant's contention, this case does not fall within the rare exception to the preservation requirement set forth in *People v Lopez* (71 NY2d 662, 666). In any event, the record establishes that defendant's contention is without merit. Defendant's further contention that he was denied the opportunity to withdraw his plea is belied by the record and patently without merit.

With respect to the pleas in all three appeals, it is well settled that the only claims of ineffective assistance of counsel that

survive a guilty plea are those where the plea was infected by the alleged ineffective assistance (see *People v Collins*, 129 AD3d 1676, 1676-1677, lv denied 26 NY3d 1038). To the extent that defendant contends that alleged ineffective assistance infected the pleas, we conclude that the contention is without merit, inasmuch as it is belied by his statements during the plea colloquies (see *People v Garner*, 86 AD3d 955, 956), or it involves matters that are outside the record and is not reviewable on direct appeal (see generally *People v Davis*, 119 AD3d 1383, 1384, lv denied 24 NY3d 960). We further note that, as part of the combined plea agreement, defendant waived any claim he had to specific performance of an alleged off-the-record plea agreement and that he allegedly complied with the conditions thereof in order to receive an allegedly more lenient sentence promise with respect to all three convictions at issue herein (see generally *People v Pena*, 7 AD3d 259, 260, lv denied 3 NY3d 645).

We reject defendant's further contention that County Court erred in failing to correct an error in the presentence report. The record establishes that the court ordered the appropriate correction and thus no corrective action is required by this Court.

Finally, the sentence is not unduly harsh or severe.