

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

**1011**

**KA 15-00992**

PRESENT: CENTRA, J.P., CARNI, LINDLEY, TROUTMAN, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SCOTT W. DAVIS, DEFENDANT-APPELLANT.

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PETER J. DIGIORGIO, JR., UTICA, FOR DEFENDANT-APPELLANT.

JEFFREY S. CARPENTER, DISTRICT ATTORNEY, HERKIMER (JACQUELYN M. ASNOE OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Herkimer County Court (John H. Crandall, J.), rendered December 3, 2014. The judgment convicted defendant, upon his plea of guilty, of burglary in the first 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 burglary in the first degree (Penal Law § 140.30 [2]), defendant contends that his waiver of the right to appeal is invalid. We reject that contention. County Court engaged defendant in an adequate colloquy " 'to ensure that the waiver of the right to appeal was a knowing and voluntary choice' " (*People v Bridges*, 144 AD3d 1582, 1582, lv denied 28 NY3d 1143), and that he had " 'a full appreciation of the consequences' " of the waiver (*People v Bradshaw*, 18 NY3d 257, 264). Contrary to defendant's contention, there is no requirement that the colloquy concerning the waiver of the right to appeal precede the factual plea allocution (see *People v Bryant*, 28 NY3d 1094, 1096). In light of the court's adequate colloquy, we conclude that defendant validly waived his right to appeal, and that such valid waiver encompasses his challenge to the severity of the sentence (see *People v Morales*, 148 AD3d 1638, 1639, lv denied 29 NY3d 1083; see also *People v Lopez*, 6 NY3d 248, 255-256; *People v Hidalgo*, 91 NY2d 733, 737).

Although defendant's contentions concerning the validity of the orders of protection issued at sentencing survive his waiver of the right to appeal in this case (see *People v Russell*, 120 AD3d 1594, 1594, lv denied 24 NY3d 1046; see also *People v Victor*, 20 AD3d 927, 928, lv denied 5 NY3d 833, reconsideration denied 5 NY3d 885), he did not preserve those contentions for our review by challenging the issuance of the orders of protection (see *People v Nieves*, 2 NY3d 310, 315-317; *People v Smith*, 122 AD3d 1420, 1421, lv denied 25 NY3d 1172;

*Russell*, 120 AD3d at 1594-1595; see also *People v Collins*, 117 AD3d 1535, 1535, *lv denied* 24 NY3d 1082, *reconsideration denied* 24 NY3d 1218). We decline to exercise our power to review those contentions as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]).

Entered: September 29, 2017

Mark W. Bennett  
Clerk of the Court