

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

503

**KA 19-01026**

PRESENT: WHALEN, P.J., SMITH, CARNI, NEMOYER, AND CURRAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PERRY TOLBERT, DEFENDANT-APPELLANT.

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CAITLIN M. CONNELLY, BUFFALO, FOR DEFENDANT-APPELLANT.

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Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered April 18, 2019. The judgment convicted defendant upon a plea of guilty of attempted promoting prison contraband in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of attempted promoting prison contraband in the first degree (Penal Law §§ 110.00, 205.25 [2]). Although defendant's sole contention that County Court abused its discretion in denying his motion to withdraw the plea survives the valid waiver of the right to appeal (*see People v Dale*, 142 AD3d 1287, 1288 [4th Dept 2016], *lv denied* 28 NY3d 1144 [2017]), we conclude based upon the record before us that his contention lacks merit (*see People v Gerena*, 174 AD3d 1428, 1429-1430 [4th Dept 2019], *lv denied* 34 NY3d 981 [2019]; *see generally People v Blount*, 90 NY2d 998, 999 [1997]).

Entered: July 24, 2020

Mark W. Bennett  
Clerk of the Court