

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

437

KA 18-00511

PRESENT: SMITH, J.P., PERADOTTO, NEMOYER, CURRAN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAQUAN HILL, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JANE I. YOON OF COUNSEL), FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Orleans County Court (Sara Sheldon, A.J.), rendered January 8, 2018. The judgment convicted defendant upon his 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 a guilty plea of attempted promoting prison contraband in the first degree (Penal Law §§ 110.00, 205.25 [1]). As an initial matter, we agree with defendant that his waiver of the right to appeal is invalid (see *People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Biaselli*, 191 AD3d 1400, 1401 [4th Dept 2021]; *People v Wasy1*, 186 AD3d 1071, 1071 [4th Dept 2020]; *People v Baxter*, 185 AD3d 1452, 1452 [4th Dept 2020], *lv denied* 35 NY3d 1092 [2020]). Contrary to defendant's contention, the investigator's statements prior to issuing the *Miranda* warnings did not vitiate or neutralize the effect of the warnings (*cf. People v Dunbar*, 24 NY3d 304, 315-316 [2014], *cert denied* 575 US 1005 [2015]), and therefore County Court did not err in refusing to suppress defendant's statements to the investigator (see *People v Box*, 181 AD3d 1238, 1239 [4th Dept 2020], *lv denied* 35 NY3d 1025 [2020], *cert denied* – US –, 141 S Ct 1099 [2021]; *People v Jemes*, 132 AD3d 1361, 1362 [4th Dept 2015], *lv denied* 26 NY3d 1110 [2016]).

Entered: April 30, 2021

Mark W. Bennett
Clerk of the Court