

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

205

KA 18-00876

PRESENT: PERADOTTO, J.P., LINDLEY, CURRAN, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARRYL GOODWIN, DEFENDANT-APPELLANT.

MARY WHITESIDE, NORTH HOLLYWOOD, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DEREK HARNSBERGER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Vincent M. Dinolfo, J.), rendered September 22, 2016. The judgment convicted defendant upon his plea of guilty of criminal possession of a controlled substance in the third degree and criminally using drug paraphernalia in the second 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 criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]) and criminally using drug paraphernalia in the second degree (§ 220.50 [2]). Initially, we agree with defendant that his waiver of the right to appeal is invalid and thus does not preclude our review of any of his contentions (*see People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Josue F.*, 191 AD3d 1483, 1484 [4th Dept 2021], *lv denied* 37 NY3d 957 [2021]).

Defendant contends that he was denied the right to counsel when, during his arraignment in Rochester City Court, that court relied on a statement made by the Public Defender that defendant was not eligible for assigned counsel. Because “the record does not make clear, irrefutably, that a right to counsel violation has occurred,” defendant’s contention must be raised by way of a motion pursuant to CPL 440.10 (*People v McLean*, 15 NY3d 117, 121 [2010]; *see People v Townsend*, 202 AD3d 447, 448 [1st Dept 2022], *lv denied* – NY3d – [2022]; *People v Bakerx*, 114 AD3d 1244, 1247 [4th Dept 2014], *lv denied* 22 NY3d 1196 [2014]).

We have considered defendant’s remaining contentions concerning the grand jury presentation, and we conclude that they do not require

modification or reversal of the judgment.

Entered: April 29, 2022

Ann Dillon Flynn
Clerk of the Court