SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

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KA 22-00256

PRESENT: PERADOTTO, J.P., BANNISTER, MONTOUR, AND GREENWOOD, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

LEONARD BURDEN, DEFENDANT-APPELLANT.

ANDREW D. CORREIA, PUBLIC DEFENDER, LYONS (BRIDGET L. FIELD OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL D. CALARCO, DISTRICT ATTORNEY, LYONS (R. MICHAEL TANTILLO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wayne County Court (John B. Nesbitt, J.), rendered November 10, 2021. The judgment convicted defendant upon a plea of guilty of assault in the second 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 assault in the second degree (Penal Law § 120.05 [2]), defendant contends that County Court erred in summarily denying his motion to withdraw his guilty plea based on his claim of innocence. Preliminarily, because that contention would survive even a valid waiver of the right to appeal, we need not consider defendant's challenge to the validity of the waiver (*see People v Walcott*, 164 AD3d 1593, 1593 [4th Dept 2018], *lv denied* 32 NY3d 1116 [2018]; *People v Colon*, 122 AD3d 1309, 1309-1310 [4th Dept 2014], *lv denied* 25 NY3d 1200 [2015]; *People v Sparcino*, 78 AD3d 1508, 1509 [4th Dept 2010], *lv denied* 16 NY3d 746 [2011]).

"When a defendant moves to withdraw a guilty plea, the nature and extent of the fact-finding inquiry 'rest[] largely in the discretion of the Judge to whom the motion is made' and a hearing will be granted only in rare instances" (*People v Brown*, 14 NY3d 113, 116 [2010]; *see People v Tinsley*, 35 NY2d 926, 927 [1974]). " '[O]ften a limited interrogation by the court will suffice. The defendant should be afforded [a] reasonable opportunity to present [their] contentions and the court should be enabled to make an informed determination' " (*People v Harris*, 206 AD3d 1711, 1712 [4th Dept 2022], *lv denied* 38 NY3d 1188 [2022], quoting *Tinsley*, 35 NY2d at 927). "[W]hen a motion to withdraw a plea is patently insufficient on its face, a court may simply deny the motion" (*People v Mitchell*, 21 NY3d 964, 967 [2013]; *see People v Brooks*, 187 AD3d 1587, 1589 [4th Dept 2020], *lv denied* 36

NY3d 1049 [2021]).

Defendant's conviction arose from an incident in which he struck the victim in the head with a baseball bat, causing the victim to sustain a concussion and requiring 11 staples in her head. Defendant admitted during the plea colloquy that he struck the victim with a baseball bat, causing physical injury to her. In support of his motion to withdraw the plea, defendant submitted the affidavit of a neighbor of the victim, who averred that the victim said that she "busted [herself] in the head." In opposition to the motion, the People submitted a supporting deposition of the victim denying that she made any such statement to the neighbor. We conclude that this case does not present one of the "rare instance[s]" where a hearing was required (*Tinsley*, 35 NY2d at 927), and that the court did not abuse its discretion in summarily denying the motion. The notion that the victim struck herself in the head with a baseball bat was incredible and properly rejected by the court (*see generally Sparcino*, 78 AD3d at 1509).

Entered: June 9, 2023

Ann Dillon Flynn
Clerk of the Court