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

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KA 21-01582

PRESENT: WHALEN, P.J., LINDLEY, GREENWOOD, NOWAK, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V   MEMORANDUM AND ORDER

JONATHAN RIOS, DEFENDANT-APPELLANT.

SARAH S. HOLT, CONFLICT DEFENDER, ROCHESTER (KATHLEEN P. REARDON OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (AMY N. WALENDZIAK OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Michael L. Dollinger, J.), rendered September 22, 2021. The judgment convicted defendant upon his plea of guilty of robbery 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 robbery in the second degree (Penal Law § 160.10 [2] [b]), defendant contends that his post-plea statements cast doubt on his guilt and require vacatur of the plea. Inasmuch as defendant's challenge to the voluntariness of the plea would survive even a valid waiver of the right to appeal (*see People v Cunningham*, 213 AD3d 1270, 1271 [4th Dept 2023], *lv denied* 39 NY3d 1110 [2023]; *People v Sapp*, 210 AD3d 1431, 1432 [4th Dept 2022], *lv denied* 39 NY3d 1075 [2023]), we need not address the validity of the waiver of the right to appeal, which defendant does not challenge on appeal (*see People v Morseman*, 199 AD3d 1475, 1475 [4th Dept 2021]). Defendant's challenge to the voluntariness of his guilty plea, however, is not preserved for our review inasmuch as he did not move to withdraw the plea or to vacate the judgment of conviction (*see People v Jones*, 211 AD3d 1489, 1490 [4th Dept 2022], *lv denied* 40 NY3d 929 [2023]; *People v Garbarini*, 64 AD3d 1179, 1179 [4th Dept 2009], *lv denied* 13 NY3d 744 [2009]), and this case does not fall within the narrow exception to the preservation rule set forth in *People v Lopez* (71 NY2d 662, 666 [1988]).

Entered: March 22, 2024   Ann Dillon Flynn
                                                 Clerk of the Court