

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

1076

KA 12-01589

PRESENT: SMITH, J.P., PERADOTTO, CARNI, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SAMUEL L. RODRIGUEZ, DEFENDANT-APPELLANT.

WAGNER & HART, LLP, OLEAN (JANINE C. FODOR OF COUNSEL), FOR
DEFENDANT-APPELLANT.

LORI PETTIT RIEMAN, DISTRICT ATTORNEY, LITTLE VALLEY, FOR RESPONDENT.

Appeal from a judgment of the Cattaraugus County Court (Larry M. Himelein, J.), rendered August 13, 2012. The judgment convicted defendant, upon his plea of guilty, of burglary in the first degree and robbery 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 burglary in the first degree (Penal Law § 140.30 [2]) and robbery in the second degree (§ 160.10 [1]). Contrary to defendant's contention, we conclude that he knowingly, intelligently and voluntarily waived his right to appeal (*see generally People v Lopez*, 6 NY3d 248, 256; *People v Kemp*, 94 NY2d 831, 833). The challenge by defendant to County Court's suppression ruling is encompassed by that valid waiver of the right to appeal (*see Kemp*, 94 NY2d at 833; *People v Goossens*, 92 AD3d 1282, 1283, lv denied 19 NY3d 960).

Entered: November 8, 2013

Frances E. Cafarell
Clerk of the Court