

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

399

KA 09-01488

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT

V

MEMORANDUM AND ORDER

SAMUEL L. RIVALDO, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Stephen T. Miller, A.J.), rendered June 2, 2009. The judgment convicted defendant, upon his plea of guilty, of grand larceny 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 grand larceny in the second degree (Penal Law § 155.40 [1]). On this record, we conclude that defendant's challenge to the amount of the monthly restitution payments ordered by County Court is not foreclosed by his valid waiver of the right to appeal because the amount of those monthly payments was not included in the terms of the plea agreement (*see People v Tessitore*, 101 AD3d 1621, 1622, *lv denied* 20 NY3d 1104). Even assuming, arguendo, that defendant preserved for our review his challenge to the amount of the monthly restitution payments (*see generally People v Connors*, 91 AD3d 1340, 1341-1342, *lv denied* 18 NY3d 956; *People v Farewell*, 90 AD3d 1502, 1503, *lv denied* 18 NY3d 957), we conclude that it lacks merit (*see generally People v Zimmerman*, 12 AD3d 1105, 1105, *lv denied* 4 NY3d 750).

Entered: May 2, 2014

Frances E. Cafarell
Clerk of the Court