

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

**372**

**KA 14-00395**

PRESENT: CENTRA, J.P., CARNI, DEJOSEPH, TROUTMAN, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID J. STEINMETZ, JR., DEFENDANT-APPELLANT.

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D.J. & J.A. CIRANDO, ESQS., SYRACUSE (BRADLEY E. KEEM OF COUNSEL), FOR DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JOHN C. TUNNEY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Steuben County Court (Joseph W. Latham, J.), rendered October 30, 2013. The judgment convicted defendant, upon his plea of guilty, of criminal mischief in the third 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 mischief in the third degree (Penal Law § 145.05 [2]). We reject defendant's contention that his waiver of the right to appeal is invalid. Defendant signed a plea agreement that required him to waive his right to appeal, and County Court's "plea colloquy, together with the written waiver of the right to appeal, adequately apprised defendant that 'the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty' " (*People v Kulyeshie*, 71 AD3d 1478, 1478 [4th Dept 2010], *lv denied* 14 NY3d 889 [2010]; *see People v Bryant*, 28 NY3d 1094, 1095-1096 [2016]). Even assuming, arguendo, that defendant's challenges to his *Alford* plea survive his valid waiver of appeal, we conclude that those challenges are unpreserved for our review because defendant failed to raise them as part of a motion to withdraw his plea or to vacate the judgment of conviction (*see People v Miller*, 87 AD3d 1303, 1303-1304 [4th Dept 2011], *lv denied* 18 NY3d 926 [2012]; *People v Sherman*, 8 AD3d 1026, 1026 [4th Dept 2004], *lv denied* 3 NY3d 681 [2004]), and this case does not fall within the narrow exception to the preservation requirement (*see People v Lopez*, 71 NY2d 662, 666 [1988]; *People v Rivers*, 145 AD3d 1591, 1592 [4th Dept 2016], *lv denied* 29 NY3d 952 [2017]). Finally, to the extent that defendant's ineffective assistance of counsel contention survives his *Alford* plea and waiver of the right to appeal, we conclude that it is without merit inasmuch as the record before us establishes that defendant was

afforded meaningful representation (*see People v Blarr* [appeal No. 1], 149 AD3d 1606, 1606 [4th Dept 2017], *lv denied* 29 NY3d 1123 [2017]).

Entered: March 23, 2018

Mark W. Bennett  
Clerk of the Court