

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

580

KA 19-00984

PRESENT: CARNI, J.P., LINDLEY, CURRAN, BANNISTER, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HECTOR SIERRA-GARCIA, DEFENDANT-APPELLANT.

CHARLES J. GREENBERG, AMHERST, FOR DEFENDANT-APPELLANT.

MARK S. SINKIEWICZ, DISTRICT ATTORNEY, WATERLOO, FOR RESPONDENT.

Appeal from a judgment of the Seneca County Court (Dennis F. Bender, J.), rendered February 13, 2018. The judgment convicted defendant, upon a plea of guilty, of attempted promoting prison contraband in the first 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 attempted promoting prison contraband in the first degree (Penal Law §§ 110.00, 205.25 [2]), defendant contends that his waiver of the right to appeal is invalid and that his plea was "legally insufficient" for various reasons. Even assuming, arguendo, that the waiver of the right to appeal is invalid (*see People v Smith*, 191 AD3d 1243, 1244 [4th Dept 2021]), we conclude that defendant failed to preserve his substantive contention for our review because he did not move to withdraw the plea or to vacate the judgment of conviction (*see People v Rosario*, 188 AD3d 1678, 1678 [4th Dept 2020], *lv denied* 36 NY3d 1100 [2021]), and this case does not fall within the narrow exception to the preservation requirement recognized in *People v Lopez* (71 NY2d 662, 666 [1988]). In any event, we perceive no basis to vacate the plea.

Entered: June 17, 2021

Mark W. Bennett
Clerk of the Court