

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

723

KA 19-00209

PRESENT: WHALEN, P.J., CENTRA, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KYLE L. BORLAND, DEFENDANT-APPELLANT.

D.J. & J.A. CIRANDO, PLLC, SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR DEFENDANT-APPELLANT.

GREGORY S. OAKES, DISTRICT ATTORNEY, OSWEGO (AMY L. HALLENBECK OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oswego County Court (Donald E. Todd, J.), rendered October 29, 2018. The judgment convicted defendant upon a plea of guilty of attempted burglary 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 a plea of guilty of attempted burglary in the third degree (Penal Law §§ 110.00, 140.20). We agree with defendant that the waiver of the right to appeal "is not enforceable inasmuch as the totality of the circumstances fails to reveal that defendant 'understood the nature of the appellate rights being waived' " (*People v Youngs*, 183 AD3d 1228, 1228 [4th Dept 2020], *lv denied* 35 NY3d 1050 [2020], quoting *People v Thomas*, 34 NY3d 545, 559 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]). Nevertheless, we affirm. Defendant failed to preserve for our review his contention that his guilty plea was not knowingly, voluntarily, or intelligently entered inasmuch as he did not move to withdraw his guilty plea or to vacate the judgment of conviction (*see People v Turner*, 175 AD3d 1783, 1784 [4th Dept 2019], *lv denied* 34 NY3d 1082 [2019]), and we conclude that this case does not fall within the narrow exception to the preservation rule set forth in *People v Lopez* (71 NY2d 662, 666-667 [1988]). Further, the sentence is not unduly harsh or severe.

Entered: October 1, 2021

Ann Dillon Flynn
Clerk of the Court