

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

664

KA 22-00591

PRESENT: WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES R. HOPKINS, DEFENDANT-APPELLANT.

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (BRADLEY E. KEEM OF COUNSEL), FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (V. CHRISTOPHER EAGGLESTON OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Brian D. Dennis, J.), rendered March 15, 2022. The judgment convicted defendant, upon his plea of guilty, of 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 robbery in the second degree (Penal Law § 160.10 [2] [a]). We reject defendant's contention that the waiver of the right to appeal is invalid. Although the written waiver included a misleading heading, the oral colloquy, together with the remainder of the written waiver, "was sufficient to support a knowing and voluntary waiver under the totality of the circumstances" (*People v Thomas*, 34 NY3d 545, 564 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]). Defendant further contends that the plea was not knowing, intelligent, and voluntary. Although that contention survives his valid waiver of the right to appeal, defendant failed to preserve the contention for our review 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]). Assuming, arguendo, that defendant's contention concerning County Court's determination revoking his bail survives the valid waiver of the right to appeal (*see generally People v Knoxsah*, 94 AD3d 1505, 1506 [4th Dept 2012]), we conclude that the contention is nevertheless not properly before us inasmuch as no appeal lies from such a determination (*see People v MacLean*, 48 AD3d 1215, 1217 [4th Dept 2008], *lv denied* 10 NY3d 866 [2008], *reconsideration denied* 11 NY3d 790 [2008]; *see also People ex rel. Kuby v Merritt*, 96 AD3d 607, 608 [1st Dept 2012], *lv denied* 19 NY3d

813 [2012])). Moreover, that contention was rendered moot by defendant's conviction (see *People v Ballman*, 64 AD3d 9, 13 [4th Dept 2009], *affd in part & appeal dismissed in part* 15 NY3d 68 [2010]), and defendant has failed to demonstrate the applicability of the exception to the mootness doctrine (see generally *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-715 [1980]). Defendant's remaining contentions are encompassed by his valid waiver of the right to appeal (see generally *People v Lopez*, 6 NY3d 248, 255-256 [2006]).