

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

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KA 06-03779

PRESENT: SCUDDER, P.J., HURLBUTT, CENTRA, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID PETERS, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (GERALD T. BARTH OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (William D. Walsh, J.), rendered October 23, 2006. The judgment convicted defendant, upon his plea of guilty, of murder 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 murder in the second degree (Penal Law § 125.25 [3]). Contrary to the contention of defendant, the record of the plea colloquy establishes that his waiver of the right to appeal was voluntary, knowing and intelligent (*see People v Branch*, 49 AD3d 1206, *lv denied* 10 NY3d 932). "The further contention of defendant that his plea was not voluntarily, knowingly, and intelligently entered is actually a challenge to the factual sufficiency of the plea allocution . . . , and that challenge is encompassed by the valid waiver of the right to appeal" (*People v Wilson*, 38 AD3d 1348, *lv denied* 9 NY3d 927; *see Branch*, 49 AD3d 1206). In any event, defendant failed to preserve that challenge for our review (*see People v Lopez*, 71 NY2d 662, 665), and this case does not fall within the narrow exception to the preservation requirement (*see id.* at 666).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court