

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

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**KA 07-01247**

PRESENT: HURLBUTT, J.P., SMITH, FAHEY, PERADOTTO, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

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MEMORANDUM AND ORDER

KEVIN R. LANZARA, DEFENDANT-APPELLANT.

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DENNIS A. GERMAIN, WATERTOWN, FOR DEFENDANT-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (SASHA SAMBERG-CHAMPION OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Lewis County Court (Charles C. Merrell, J.), rendered January 12, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the second 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 criminal possession of a controlled substance in the second degree (Penal Law § 220.18 [1]), defendant contends that County Court erred in imposing a fine without conducting a hearing to determine his ability to pay. That contention is encompassed by defendant's valid waiver of the right to appeal (*see generally People v Hidalgo*, 91 NY2d 733, 737; *People v Horton*, 256 AD2d 1105, lv denied 93 NY2d 972). In any event, "appellate challenges to the procedures utilized in determining and imposing sentence are forfeited if they are not raised in a timely manner before the trial court" (*People v Callahan*, 80 NY2d 273, 281), and here defendant forfeited that challenge by failing to raise it before the sentencing court.

Entered: February 6, 2009

JoAnn M. Wahl  
Clerk of the Court