

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

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KA 07-00627

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WALTER TELFER, DEFENDANT-APPELLANT.

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

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (MATTHEW H. JAMES OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (William D. Walsh, J.), rendered January 31, 2007. The judgment convicted defendant, upon his plea of guilty, of robbery in the first 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 first degree (Penal Law § 160.15 [4]). To the extent that defendant contends that his plea was not knowingly, voluntarily or intelligently entered because he failed to recite the underlying facts of the crime to which he pleaded guilty, that contention is actually a challenge to the factual sufficiency of the plea allocution (*see People v Bailey*, 49 AD3d 1258, 1259, *lv denied* 10 NY3d 932). Defendant failed to preserve that contention for our review by failing to move to withdraw his plea or to vacate the judgment of conviction (*see People v Lopez*, 71 NY2d 662, 665). In any event, that contention lacks merit inasmuch as there is no requirement that a defendant recite the underlying facts of the crime to which he or she is pleading guilty (*see People v Martin*, 55 AD3d 1304; *Bailey*, 49 AD3d at 1259). By pleading guilty, defendant forfeited his further contention that he was denied his statutory right to a speedy trial pursuant to CPL 30.30 (*see People v O'Brien*, 56 NY2d 1009, 1010; *People v Trapp*, 48 AD3d 1086, *lv denied* 10 NY3d 871). Finally, although defendant contends that his plea was not knowingly, voluntarily or intelligently entered inasmuch as defense counsel "guaranteed that he would be able to appeal his case including the CPL 30.30 motion," that alleged statement of defense counsel "was not placed on the record at the time of the plea, [and thus] it is not entitled to judicial recognition" (*People v Ramos*, 63 NY2d 640, 643;

see People v Pickett, 49 AD3d 1207, 1208, *lv denied* 10 NY3d 963).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court