

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

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KA 03-02272

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANSISCO CARABALLO, DEFENDANT-APPELLANT.

RICHARD W. YOUNGMAN, CONFLICT DEFENDER, ROCHESTER (KIMBERLY J. CZAPRANSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Richard A. Keenan, J.), rendered July 25, 2003. The judgment convicted defendant, upon his plea of guilty, of burglary 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 burglary in the first degree (Penal Law § 140.30 [1]). Contrary to the contention of defendant, his waiver of the right to appeal was valid. "Defendant's responses to County Court's questions unequivocally established that defendant understood the proceedings and was voluntarily waiving the right to appeal" (*People v Gilbert*, 17 AD3d 1164, 1164, *lv denied* 5 NY3d 762; see *People v Griner*, 50 AD3d 1557, *lv denied* 11 NY3d 737; *People v Williams*, 39 AD3d 1200, *lv denied* 9 NY3d 853). The valid waiver by defendant of his right to appeal encompasses his contention that the court erred in refusing to suppress identification testimony (see *People v Kemp*, 94 NY2d 831, 833; *People v Brown*, 41 AD3d 1234, *lv denied* 9 NY3d 873).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court