

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

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KA 06-03797

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSHUA KAPP, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (SHIRLEY K. DUFFY 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 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 [2]). Contrary to the contentions of defendant, we conclude that his waiver of the right to appeal is valid (*see People v Lopez*, 6 NY3d 248, 256), and that it is not void as against public policy (*see People v Carmody*, 53 AD3d 1048, *lv denied* 11 NY3d 830; *see generally People v Muniz*, 91 NY2d 570, 573-575; *People v Callahan*, 80 NY2d 273, 280; *People v Seaberg*, 74 NY2d 1, 7-10). The further contention of defendant that he was denied effective assistance of counsel survives his guilty plea and valid waiver of the right to appeal only insofar as he contends " 'that his plea was infected by the allegedly ineffective assistance and that he entered the plea because of his attorney's poor performance' " (*People v Neal*, 56 AD3d 1211; *see People v Dean*, 48 AD3d 1244, 1245, *lv denied* 10 NY3d 839; *see also People v Petgen*, 55 NY2d 529, 534-535, *rearg denied* 57 NY2d 674). That contention, however, is belied by the statements of defendant during the plea colloquy that he was satisfied with the representation provided by defense counsel (*see People v Farley*, 34 AD3d 1229, *lv denied* 8 NY3d 880; *People v Dean*, 302 AD2d 951; *People v Forshey*, 294 AD2d 868, *lv denied* 98 NY2d 675). We have considered defendant's remaining contentions and conclude that they are without merit.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court