

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

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KA 07-02684

PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FREDERICK K. ROYCE, DEFENDANT-APPELLANT.

DEL ATWELL, EAST HAMPTON, FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered September 24, 2007. The judgment convicted defendant, upon his plea of guilty, of driving while intoxicated, a class E felony.

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 felony driving while intoxicated (Vehicle and Traffic Law § 1192 [2]; § 1193 [1] [c] [former (i)]). To the extent that it appears that defendant is challenging the validity of his waiver of the right to appeal, we reject that challenge (*see generally People v Lopez*, 6 NY3d 248, 256). The valid waiver by defendant of the right to appeal encompasses his challenge to the severity of the sentence (*see id.*). Further, insofar as the contention of defendant that he was denied effective assistance of counsel survives his guilty plea and his waiver of the right to appeal, we conclude that defendant failed to preserve his contention for our review because he did not move to withdraw his plea or to vacate the judgment of conviction on that ground (*see People v Fairman*, 38 AD3d 1346, *lv denied* 9 NY3d 865). In any event, we conclude that defendant's contention lacks merit (*see generally People v Ford*, 86 NY2d 397, 404).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court