

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

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KA 07-02424

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SEAN D. CLIFFORD, DEFENDANT-APPELLANT.

DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (MARY-JEAN BOWMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Niagara County (Sara S. Sperrazza, J.), rendered August 15, 2007. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a weapon in the third 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 attempted criminal possession of a weapon in the third degree (Penal Law §§ 110.00, 265.02 [7]). Defendant knowingly and voluntarily waived his right to appeal (*see People v Lopez*, 6 NY3d 248, 256), and that valid waiver encompasses his challenge to the severity of the sentence (*see id.*). Moreover, defendant failed to move to withdraw the plea or to vacate the judgment of conviction and thus has failed to preserve for our review his challenge to the voluntariness of his plea (*see People v Collins*, 45 AD3d 1472, *lv denied* 10 NY3d 861; *People v DeJesus*, 248 AD2d 1023, *lv denied* 92 NY2d 878). In any event, we conclude that defendant's challenges are without merit.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court