

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

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**KA 08-00482**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT A. PETERSEN, DEFENDANT-APPELLANT.

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KATHLEEN P. REARDON, ROCHESTER, FOR DEFENDANT-APPELLANT.

SUSAN H. LINDENMUTH, DISTRICT ATTORNEY, PENN YAN, FOR RESPONDENT.

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Appeal from a judgment of the Yates County Court (W. Patrick Falvey, J.), rendered September 18, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance 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 criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]). Although the challenge by defendant to the voluntariness of the plea survives his valid waiver of the right to appeal (*see People v DeJesus*, 248 AD2d 1023, *lv denied* 92 NY2d 878), defendant failed to preserve that challenge for our review (*see People v Collins*, 45 AD3d 1472, *lv denied* 10 NY3d 861; *DeJesus*, 248 AD2d 1023). This case does not fall within the narrow exception to the preservation doctrine (*see People v Lopez*, 71 NY2d 662, 666). Although defendant initially denied that he possessed the cocaine with the intent to sell it, County Court conducted the requisite further inquiry, whereupon defendant admitted his commission of that element of the crime (*see id.*; *People v Pane*, 292 AD2d 850, *lv denied* 98 NY2d 653; *People v Brow*, 255 AD2d 904, 905). To the extent that 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 (*see generally People v Fifield*, 24 AD3d 1221, 1222, *lv denied* 6 NY3d 775), we conclude that it lacks merit. Defendant "receive[d] an advantageous plea and nothing in the record casts doubt on the apparent effectiveness of counsel" (*People v Ford*, 86 NY2d 397, 404). Finally, the valid waiver by defendant of the right to appeal encompasses his challenge to the severity of the sentence (*see People v Lopez*, 6 NY3d 248, 256).

Entered: March 20, 2009

JoAnn M. Wahl  
Clerk of the Court