

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

1163

KA 07-02074

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, PERADOTTO, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STEVEN D. CRANDALL, DEFENDANT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered May 24, 2007. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the fourth 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 grand larceny in the fourth degree (Penal Law § 155.30 [1]). We reject the contention of defendant that County Court erred in refusing to suppress his statement to the police. "In concluding that defendant's statement to the police was voluntarily made . . ., the suppression court was entitled to credit the testimony of [the] police witness[] that defendant was advised of his *Miranda* rights and knowingly, voluntarily and intelligently waived those rights" (*People v Brooks*, 26 AD3d 739, 740, *lv denied* 6 NY3d 846, 7 NY3d 810). Defendant did not move to withdraw the plea or to vacate the judgment of conviction and thus failed to preserve for our review his challenge to the factual sufficiency of the plea allocution with respect to the amount of money stolen (*see People v Lopez*, 71 NY2d 662, 665; *People v Stuart*, 19 AD3d 1167, *lv denied* 5 NY3d 810). This case does not fall within the narrow exception to the preservation requirement (*see Lopez*, 71 NY2d at 666).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court