

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

**1317**

**KA 08-01007**

PRESENT: MARTOCHE, J.P., SMITH, PERADOTTO, GREEN, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GIOVANNI CAPOCETTA, ALSO KNOWN AS JOHN  
CAPOCETTA, DEFENDANT-APPELLANT.

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ABBIE GOLDBAS, UTICA, FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered August 24, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second 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 weapon in the second degree (Penal Law § 265.03 [3]). Contrary to the contention of defendant, the record establishes that his waiver of the right to appeal was knowingly, intelligently and voluntarily entered (see *People v Lopez*, 6 NY3d 248, 256). The valid waiver by defendant of the right to appeal encompasses his challenge to the factual sufficiency of the plea allocution, and in any event, defendant failed to preserve that challenge for our review (see *People v Grimes*, 53 AD3d 1055, 1056, lv denied 11 NY3d 789; *People v Jackson*, 50 AD3d 1615, 1615-1616, lv denied 10 NY3d 960).

Entered: November 13, 2009

Patricia L. Morgan  
Clerk of the Court