

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

1449

KA 08-01690

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LISA L. SCHWANDNER, ALSO KNOWN AS LISA TRICKEY,
DEFENDANT-APPELLANT.

MARK D. FUNK, ROCHESTER, FOR DEFENDANT-APPELLANT.

CINDY F. INTSCHERT, DISTRICT ATTORNEY, WATERTOWN, FOR RESPONDENT.

Appeal from a judgment of the Jefferson County Court (Kim H. Martusewicz, J.), rendered July 1, 2008. The judgment convicted defendant, upon her plea of guilty, of driving while intoxicated, a class D felony.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting her, upon her plea of guilty, of felony driving while intoxicated (Vehicle and Traffic Law § 1192 [2]; § 1193 [1] [c] [former (ii)]). Contrary to the contention of defendant, we conclude that her waiver of the right to appeal was voluntarily, knowingly and intelligently entered (see *People v Lopez*, 6 NY3d 248, 256; *People v Seaberg*, 74 NY2d 1, 11-12). The valid waiver of the right to appeal encompasses the further contention of defendant that County Court abused its discretion in terminating her from the drug court program (see *People v Rodriguez*, 46 AD3d 356, lv denied 10 NY3d 815), as well as her challenge to the severity of the sentence (see *People v Hidalgo*, 91 NY2d 733, 737; *People v Heer*, 309 AD2d 1191, lv denied 1 NY3d 573). To the extent that the contention of defendant that she was denied effective assistance of counsel survives her guilty plea and her waiver of the right to appeal (see *People v Santos*, 37 AD3d 1141, lv denied 8 NY3d 950), we conclude that defendant failed to preserve her contention for our review by failing to move to withdraw her plea or to vacate the judgment of conviction on that ground (see *People v Grandin*, 63 AD3d 1604, lv denied 13 NY3d 744).

Entered: November 20, 2009

Patricia L. Morgan
Clerk of the Court