

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

1645

KA 07-01495

PRESENT: SCUDDER, P.J., HURLBUTT, SMITH, AND CENTRA, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEFFREY C. BILLINS, DEFENDANT-APPELLANT.

PAUL M. DEEP, UTICA, FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Oneida County Court (Barry M. Donalty, J.), rendered May 15, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third degree (two counts), criminal possession of a weapon in the second degree, criminal possession of a weapon in third degree (two counts) and criminally using drug paraphernalia 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, inter alia, two counts of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1], [12]). 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). That valid waiver encompasses defendant's 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). The challenge by defendant to the severity of the sentence is also encompassed by his valid waiver of the right to appeal (*see People v Hidalgo*, 91 NY2d 733, 737).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court