

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

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KA 08-00890

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

APRIL LENO-MARCH, DEFENDANT-APPELLANT.

JOHN E. TYO, SHORTSVILLE, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JAMES B. RITTS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Craig J. Doran, J.), rendered January 15, 2008. The judgment convicted defendant, upon her plea of guilty, of burglary in the first degree and assault in the first degree.

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 burglary in the first degree (Penal Law § 140.30 [1]) and assault in the first degree (§ 120.10 [1]). Contrary to the contention of defendant, the evidence establishes that she knowingly, intelligently and voluntarily waived her right to appeal (see *People v Lopez*, 6 NY3d 248, 256; *People v Seaberg*, 74 NY2d 1, 11). That valid waiver of the right to appeal encompasses defendant's challenges to County Court's suppression ruling (see *People v Kemp*, 94 NY2d 831, 833; *People v Garner*, 52 AD3d 1265, lv denied 11 NY3d 736), as well as defendant's challenge to the factual sufficiency of the plea allocution (see *People v Johnson*, 60 AD3d 1496, lv denied 12 NY3d 926; *People v Spikes*, 28 AD3d 1101, 1102, lv denied 7 NY3d 818; *People v Bland*, 27 AD3d 1052, lv denied 6 NY3d 892).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court