

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

757

**KA 09-01578**

PRESENT: SMITH, J.P., FAHEY, CARNI, GREEN, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JESSICA ANN DUGAN, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (SUSAN C. MINISTERO OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHELLE L. CIANCIOSA OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (M. William Boller, A.J.), rendered July 24, 2009. The judgment convicted defendant, upon her plea of guilty, of grand larceny in the third degree.

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

Memorandum: On appeal from a judgment convicting her upon her plea of guilty of grand larceny in the third degree (Penal Law § 155.35), defendant contends that her right to due process was violated when Supreme Court allegedly conditioned its sentencing commitment on her payment of a portion of the restitution amount by the date of sentencing. Defendant failed to preserve that contention for our review (*see generally People v Riley*, 9 AD3d 902, *lv denied* 3 NY3d 741), and we decline to exercise our power to review it as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*). Contrary to the further contention of defendant, her waiver of the right to appeal was knowingly, intelligently and voluntarily entered (*see People v Lopez*, 6 NY3d 248, 256), and her challenge to the severity of the sentence is encompassed by that valid waiver (*see People v Hidalgo*, 91 NY2d 733, 737; *People v Billins*, 68 AD3d 1794, *lv denied* 14 NY3d 797).

Entered: June 11, 2010

Patricia L. Morgan  
Clerk of the Court