

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

979

**KA 09-01483**

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRED HARRIS, JR., DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (DAVID W. BENTIVEGNA OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (DOUGLAS A. GOERSS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Erie County Court (Michael L. D'Amico, J.), rendered June 11, 2009. The judgment convicted defendant, upon his plea of guilty, of attempted robbery in the first 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 attempted robbery in the first degree (Penal Law §§ 110.00, 160.15 [4]). Contrary to defendant's contention, County Court "expressly ascertained from defendant that, as a condition of the plea, he was agreeing to waive his right to appeal, and the court did not conflate that right with those automatically forfeited by a guilty plea" (*People v Pasha*, 36 AD3d 425, 426, lv denied 8 NY3d 989; see *People v Lopez*, 6 NY3d 248, 256-257). The valid waiver by defendant of his right to appeal encompasses his challenge to the court's denial of his request for youthful offender status (see *People v Porter*, 55 AD3d 1313, lv denied 11 NY3d 899; *People v Williams*, 37 AD3d 1193).

Entered: October 1, 2010

Patricia L. Morgan  
Clerk of the Court