

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

1321

**KA 09-02188**

PRESENT: MARTOCHE, J.P., SCONIERS, GREEN, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BRYANT C. MCCRAY, JR., DEFENDANT-APPELLANT.

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MULDOON & GETZ, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered August 10, 2009. The judgment convicted defendant, upon his plea of guilty, of attempted promoting prison contraband in the first degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of attempted promoting prison contraband in the first degree (Penal Law §§ 110.00, 205.25 [1]), defendant challenges the validity of his waiver of the right to appeal. We reject that challenge (*see People v Lopez*, 6 NY3d 248, 256; *People v Montgomery*, 63 AD3d 1635, *lv denied* 13 NY3d 798). Although the contention of defendant that County Court failed to apprehend the scope of its sentencing discretion survives his valid waiver of the right to appeal, that contention is not supported by the record (*see Montgomery*, 63 AD3d at 1636; *People v Burgess*, 23 AD3d 1095, *lv denied* 6 NY3d 810; *cf. People v Stanley*, 309 AD2d 1254). Finally, the challenge by defendant to the severity of the sentence is encompassed by his waiver of the right to appeal (*see Lopez*, 6 NY3d at 256; *People v Hidalgo*, 91 NY2d 733, 737).

Entered: November 12, 2010

Patricia L. Morgan  
Clerk of the Court