

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

1430

KA 09-01964

PRESENT: SMITH, J.P., CENTRA, FAHEY, PERADOTTO, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOE A. MACKEY, JR., DEFENDANT-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (BRADLEY E. KEEM OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN C. TUNNEY, DISTRICT ATTORNEY, BATH (MICHAEL D. MCCARTNEY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Peter C. Bradstreet, J.), rendered June 23, 2008. The judgment convicted defendant, upon his plea of guilty, of falsifying business records in the first degree.

It is hereby ORDERED that the appeal from the judgment insofar as it imposed a sentence of incarceration is dismissed and the judgment is otherwise unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of falsifying business records in the first degree (Penal Law § 175.10). Defendant failed to move to withdraw his plea or to vacate the judgment of conviction and thus failed to preserve for our review his contention that the plea was not knowingly, voluntarily and intelligently entered (*see People v Nagel*, 60 AD3d 1485, *lv denied* 12 NY3d 918; *People v Collins*, 45 AD3d 1472, *lv denied* 10 NY3d 861). Contrary to defendant's further contention, this case does not fall within the narrow exception to the preservation requirement (*see People v Lopez*, 71 NY2d 662, 666). To the extent that the contention of defendant that he was denied effective assistance of counsel is not forfeited by the plea (*see People v Santos*, 37 AD3d 1141, *lv denied* 8 NY3d 950), it is lacking in merit (*see generally People v Ford*, 86 NY2d 397, 404).

We dismiss the appeal to the extent that defendant challenges the severity of the sentence inasmuch as he has completed serving his sentence and that part of the appeal therefore is moot (*see People v Griffin*, 239 AD2d 936). We have considered defendant's remaining

contentions and conclude that they are without merit.

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court