

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

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KA 10-00719

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ZACHERY A. ROGERS, DEFENDANT-APPELLANT.

DAVID J. FARRUGIA, PUBLIC DEFENDER, LOCKPORT (JOSEPH G. FRAZIER OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered February 9, 2010. The judgment convicted defendant, upon his plea of guilty, of rape in the second 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 rape in the second degree (Penal Law § 130.30 [1]). Contrary to defendant's contention, his waiver of the right to appeal was voluntarily, knowingly and intelligently entered (see *People v Lopez*, 6 NY3d 248, 256). 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 Porter*, 55 AD3d 1313, lv denied 11 NY3d 899). Furthermore, defendant executed a written waiver of the right to appeal and advised the court that he understood the contents of that written waiver. The valid waiver encompasses defendant's challenges to the severity of the sentence (see *People v Hidalgo*, 91 NY2d 733, 737), and to the court's denial of his request for youthful offender status (see *Porter*, 55 AD3d 1313).

Entered: February 10, 2011

Patricia L. Morgan
Clerk of the Court