

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

251

**KA 09-01485**

PRESENT: SMITH, J.P., FAHEY, LINDLEY, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANTWON M. WILLIAMS, ALSO KNOWN AS ANTWON Q.  
WILLIAMS, DEFENDANT-APPELLANT.

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KRISTIN F. SPLAIN, CONFLICT DEFENDER, ROCHESTER (KIMBERLY CZAPRANSKI  
OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LESLIE E. SWIFT OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Frank P.  
Geraci, Jr., J.), rendered May 27, 2009. The judgment convicted  
defendant, upon his plea of guilty, of burglary in the first degree.

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

Memorandum: Upon appeal from a judgment convicting him following  
his plea of guilty of burglary in the first degree (Penal Law § 140.30  
[2]), defendant contends that his written waiver of his right to  
appeal, which he executed as part of the plea agreement, is not valid.  
We reject that contention (*see People v Caraballo*, 59 AD3d 971, 1v  
*denied* 12 NY3d 852; *People v Duncan*, 267 AD2d 995, 1v *denied* 94 NY2d  
918). Defendant's further contention that County Court erred in  
denying that part of his omnibus motion seeking to suppress his  
statement made to the police is encompassed by defendant's waiver of  
the right to appeal (*see People v Kemp*, 94 NY2d 831, 833). Although  
defendant's contention that his plea was not knowing, voluntary and  
intelligent survives his valid waiver of the right to appeal (*see*  
*People v Zulian*, 68 AD3d 1731, 1732, 1v *denied* 14 NY3d 894), defendant  
failed to preserve that contention for our review inasmuch as he did  
not move to withdraw his plea or to vacate the judgment of conviction  
(*see People v Watts*, 78 AD3d 1593, 1v *denied* 16 NY3d 838). Nor can it  
be said that this case falls within the rare exception to the  
preservation requirement (*see People v Lopez*, 71 NY2d 662, 666).

Entered: March 16, 2012

Frances E. Cafarell  
Clerk of the Court