

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

742

KA 13-00718

PRESENT: SMITH, J.P., CENTRA, CARNI, WHALEN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSEPH J. SCHMIDLI, DEFENDANT-APPELLANT.

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

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (LAURA T. BITTNER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Matthew J. Murphy, III, J.), rendered September 20, 2010. The judgment convicted defendant, upon his plea of guilty, of criminal possession of stolen property in the fourth 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 criminal possession of stolen property in the fourth degree (Penal Law § 165.45 [1]). Defendant contends that his plea was not knowingly, voluntarily, and intelligently entered because he did not admit a necessary element of the crime—that he knew that the property was stolen—during the plea allocution, and that County Court erred in denying his motion to withdraw the plea on that ground. Defendant's contention is actually a challenge to the factual sufficiency of the plea allocution that is encompassed by the valid waiver of the right to appeal (*see People v Topolski*, 106 AD3d 1532, 1533, *lv denied* 21 NY3d 1020; *People v Daniels*, 59 AD3d 943, 943, *lv denied* 12 NY3d 852; *see generally People v Villar*, 115 AD3d 1361, 1361).

Entered: June 20, 2014

Frances E. Cafarell
Clerk of the Court