

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D17949
G/kmg

_____AD3d_____

Submitted - January 16, 2008

A. GAIL PRUDENTI, P.J.
PETER B. SKELOS
HOWARD MILLER
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2005-04527

DECISION & ORDER

The People, etc., respondent,
v John Taubenkraut, appellant.

(Ind. No. 04-494)

Del Atwell, East Hampton, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Andrew R. Kass of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered May 5, 2005, convicting him of grand larceny in the fourth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions regarding the sentence imposed on a separate conviction of bail jumping in the second degree under Orange County Superior Court Information No. 02388-2005, also rendered May 5, 2005, upon his plea of guilty, as well as his contention regarding the alleged ineffectiveness of counsel with respect thereto, are not properly before this Court as the defendant never filed a notice of appeal from that judgment of conviction (*see People v Pagan*, 27 AD3d 580, 581; *People v Park*, 203 AD2d 596).

The defendant's contention that the court failed to fulfill its sentencing promise is unpreserved for appellate review (*see People v Marinaro*, 45 AD3d 867; *People v Lewis*, 216 AD2d 328). In any event, the record reveals that the sentence actually imposed was the promised sentence.

February 13, 2008

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The defendant's valid and unrestricted waiver of the right to appeal, as part of his plea agreement, precludes appellate review of his claims that the sentence imposed was excessive (*see People v Ramos*, 7 NY3d 737; *People v Lopez*, 6 NY3d 248; *People v Seaberg*, 74 NY2d 1), and that he received the ineffective assistance of counsel (*see People v Dixon*, 41 AD3d 861, 862; *People v Demosthene*, 2 AD3d 874). To the extent the defendant contends that his counsel was ineffective such that the voluntariness of his plea was affected, this contention is without merit (*see Hill v Lockhart*, 474 US 52, 59; *Strickland v Washington*, 466 US 668, 687; *People v McDonald*, 1 NY3d 109, 113-115).

PRUDENTI, P.J., SKELOS, MILLER, COVELLO and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court