

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

D22112
Y/kmg

_____AD3d_____

Submitted - January 16, 2009

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-04347

DECISION & ORDER

The People, etc., respondent,
v Caleb Kornegay, appellant.

(Ind. No. 06-00795)

John P. Savoca, Yorktown Heights, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Luke E. Bovill of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (De Rosa, J.), rendered April 26, 2007, convicting him of criminal possession of a weapon in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's knowing, voluntary, and intelligent waiver of his right to appeal precludes review of his claims regarding the court's denial of that branch of his omnibus motion which was to suppress physical evidence, as well as his claims regarding counsel's performance at the suppression hearing, and the excessiveness of his sentence (*see People v Cardona*, 51 AD3d 941; *People v Morrow*, 48 AD3d 704, 705). The defendant did not seek to withdraw his plea of guilty, so his claim that his plea was not knowing, voluntary, and intelligent is unpreserved for appellate review (*see People v Rufa*, 57 AD3d 697). The defendant's claim that he was deprived of his right to effective assistance of counsel with respect to the plea rests on matter de hors the record and thus may not be reviewed on direct appeal (*see People v Nadal*, 57 AD3d 574).

FISHER, J.P., FLORIO, DICKERSON and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

March 3, 2009

PEOPLE v KORNEGAY, CALEB