

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

D28546  
O/nl

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 22, 2010

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
L. PRISCILLA HALL  
SHERI S. ROMAN, JJ.

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2009-06037

DECISION & ORDER

The People, etc., respondent,  
v Leonard Budden, appellant.

(Ind. No. 2124/08)

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Arza Feldman, Uniondale, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Laurie K. Gibbons and Cristin N. Connell of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Donnino, J.), rendered May 27, 2009, 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 valid waiver of his right to appeal (*see People v Lopez*, 6 NY3d 248, 257; *People v Callahan*, 80 NY2d 273), precludes review of his challenge to the factual sufficiency of the plea allocution (*see People v Murphy*, 55 AD3d 930; *People v McCarthy*, 53 AD3d 589; *People v Nash*, 38 AD3d 684).

To the extent that the defendant is claiming that his plea was not knowing, voluntary, and intelligent, this issue is unpreserved for appellate review since he did not move to withdraw his plea of guilty or to vacate the judgment of conviction (*see People v Johnson*, 73 AD3d 951; *People v Murphy*, 55 AD3d 930; *People v Rodriguez*, 51 AD3d 1043), and the case does not fall within the narrow exception to the preservation requirement (*see People v Lopez*, 71 NY2d 662, 666). In any

October 5, 2010

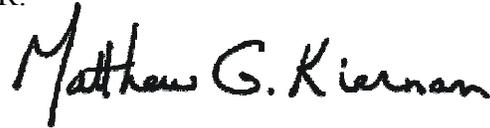
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event, the record demonstrates that the defendant's plea of guilty was entered knowingly, voluntarily, and intelligently (*see People v Rodriguez-Ovalles*, 74 AD3d 1368; *see also People v Pons*, 68 NY2d 264, 267).

SKELOS, J.P., SANTUCCI, ANGIOLILLO, HALL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court