

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

D28859  
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Submitted - October 20, 2010

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

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2008-02112

DECISION & ORDER

The People, etc., respondent,  
v Bobby Brown, appellant.

(Ind. No. 07-00338)

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Gary E. Eisenberg, New City, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Lois Cullen Valerio and Richard Longworth Hecht of counsel; Christina Anziano on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Molea, J.), rendered February 7, 2008, convicting him of criminal possession of a controlled substance in the third degree and criminal possession of a weapon in the third 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 precludes review of his challenge to the factual sufficiency of his plea allocution with respect to the count of the indictment charging him with criminal possession of a weapon in the third degree (*see People v Johnson*, 73 AD3d 951; *People v Chavez*, 71 AD3d 781; *People v Rufa*, 57 AD3d 697).

To the extent that the defendant contends that his plea was not knowing or voluntary, his claim is unpreserved for appellate review since he failed to move to withdraw his plea (*see CPL 470.05[2]*; *People v Toxey*, 86 NY2d 725; *People v Johnson*, 73 AD3d 951; *People v*

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*Broadwater*, 69 AD3d 643; *People v Elcine*, 43 AD3d 1176). The narrow exception to the preservation rule is inapplicable in this case, since the defendant's plea recitation of the facts underlying the crime of criminal possession of a weapon in the third degree did not cast significant doubt on his guilt or otherwise call into question the voluntariness of the plea (*see People v Lopez*, 71 NY2d 662, 666).

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