

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

D30496
G/kmb

_____AD3d_____

Submitted - February 25, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2009-11453
2011-02328

DECISION & ORDER

The People, etc., respondent,
v Ronald Timberlake, appellant.

(Ind. No. 95/08, S.C.I. No. 1101/08)

Michael A. Fiechter, Bellmore, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Donald Berk of counsel), for respondent.

Appeals by the defendant from two judgments of the Supreme Court, Nassau County (Gulotta, Jr., J.), both rendered November 16, 2009, convicting him of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree under S.C.I. No. 1101/08, and criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree under Indictment No. 95/08, upon his pleas of guilty, and imposing sentences.

ORDERED that the judgments are affirmed.

The defendant contends that the terms of his plea agreement violate public policy, and that his pleas were not knowingly, voluntarily, and intelligently made. The defendant's contentions, while not foreclosed by his valid waiver of his right to appeal (*see People v Muniz*, 91 NY2d 570, 575; *People v Seaberg*, 74 NY2d 1, 10), are, however, unpreserved for appellate review (*see People v Adams*, 67 AD3d 819). Although the defendant moved to vacate the judgments of conviction, his motion was not predicated on the grounds now raised on appeal (*see People v Lopez*, 71 NY2d 662, 665; *People v Martin*, 7 AD3d 640; *cf. People v Goins*, 278 AD2d 244). In any event, the

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defendant's contentions are without merit (*see People v Avery*, 85 NY2d 503, 507; *People v Fiumefreddo*, 82 NY2d 536, 543; *People v Lewis*, 73 AD3d 1212; *People v Armstead*, 48 AD3d 694, 695).

To the extent the defendant contends that the Supreme Court failed to make a sufficient inquiry into whether he violated the terms of the plea agreement or that it improperly concluded that he violated the plea agreement, his contentions are unpreserved for appellate review and, in any event, without merit (*see People v Valencia*, 3 NY3d 714, 715-716; *People v Billups*, 63 AD3d 750; *People v Andrews*, 62 AD3d 1237, 1239; *People v Garner*, 18 AD3d 669, 670).

The defendant's valid waiver of his right to appeal forecloses appellate review of his claim that the sentences imposed were excessive (*see People v Seaberg*, 74 NY2d at 11; *People v Lewis*, 73 AD3d at 1212).

The defendant's remaining contention, that the Supreme Court should have granted his motions to vacate the judgments of conviction pursuant to CPL 440.10, is not properly before this Court (*see CPL 450.15*[1]; *People v Nicholas*, 8 AD3d 300; *People v Alexis*, 295 AD2d 529; *People v McCoy*, 270 AD2d 432).

MASTRO, J.P., CHAMBERS, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court