

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

D34164
N/ct

_____AD3d_____

Argued - November 18, 2011

ANITA R. FLORIO, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2010-09229

DECISION & ORDER

The People, etc., respondent,
v John Harnage III, appellant.

(Ind. No. 1306/09)

Law Offices of Michael J. Collesano, LLM, P.C., New York, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Thomas C. Costello of
counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (J. Doyle, J.), rendered June 8, 2010, convicting him of aggravated vehicular homicide (four counts), vehicular manslaughter in the first degree (four counts), manslaughter in the second degree, driving while intoxicated (two counts), driving while ability impaired by drugs, driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs, and reckless driving, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his challenge, in effect, to the sufficiency of the indictment with respect to the charges of aggravated vehicular homicide and vehicular manslaughter in the first degree (*see People v Toxey*, 86 NY2d 725; *People v Planty*, 85 AD3d 1317, 1317-1318; *People v Phelan*, 77 AD3d 987). In any event, the defendant's contention is without merit (*see Penal Law §§ 125.13[3], 125.14[3]*).

The defendant's valid waiver of his right to appeal does not preclude review of his contention that he was deprived of the effective assistance of counsel, to the extent that the alleged ineffective assistance of counsel affected the voluntariness of his plea of guilty (*see People v Gedin*,

46 AD3d 701; *People v Dixon*, 41 AD3d 861, 862). Contrary to the defendant's contention, the record demonstrates that the plea was made knowingly, voluntarily, and intelligently (*see People v Perazzo*, 65 AD3d 1058; *see also People v Gedin*, 46 AD3d 701).

The defendant's valid waiver of his right to appeal precludes appellate review of his claim that his sentence was excessive (*see People v Lopez*, 6 NY3d 248, 255-256; *People v Hidalgo*, 91 NY2d 733, 735-737).

The defendant's remaining contentions are without merit.

FLORIO, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court