

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

D36511  
C/ct

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

Submitted - October 22, 2012

PETER B. SKELOS, J.P.  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON  
L. PRISCILLA HALL, JJ.

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2011-03849

DECISION & ORDER

The People, etc., respondent,  
v Anwar Cohen, appellant.

(Ind. No. 2707-08)

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Matthew Muraskin, Port Jefferson, N.Y., for appellant.

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

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hudson, J.), rendered April 4, 2011, convicting him of burglary in the first degree and robbery in the first degree (two counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim with respect to the voluntariness of the plea survives even a valid waiver of the right to appeal (*see People v McLean*, 77 AD3d 684, 684; *People v Rodriguez-Ovalles*, 74 AD3d 1368, 1368; *People v Elcine*, 43 AD3d 1176, 1177; *see also People v Seaberg*, 74 NY2d 1, 10; *People v Adams*, 67 AD3d 819, 819; *People v Morrow*, 48 AD3d 704, 705; *People v Nicholas*, 8 AD3d 300, 300; *People v Hong Ping Lou*, 299 AD2d 559, 560). However, the defendant's contention, in effect, that his plea of guilty was not knowingly, voluntarily, and intelligently entered is unpreserved for appellate review, since he did not move to withdraw his plea on this ground prior to the imposition of sentence (*see CPL 220.60*[3], 470.05[2]; *People v Clarke*, 93 NY2d 904, 906; *People v Andrea*, 98 AD3d 627, 627; *People v Hayes*, 91 AD3d 792, 792; *People v Kulmatycki*, 83 AD3d 734, 734; *People v Rusielewicz*, 45 AD3d 704, 704). In any event, contrary to the defendant's contention, the record establishes that the defendant's plea was knowingly, voluntarily, and intelligently entered (*see People v Seeber*, 4 NY3d 780; *People v*

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*Fiumefreddo*, 82 NY2d 536, 543; *People v Palmer*, 95 AD3d 1141, 1142; *People v Appling*, 94 AD3d 1135, 1136; *People v Cancel*, 92 AD3d 891, 891; *People v Ortiz*, 89 AD3d 1113, 1113).

The defendant's contention that he was deprived of the effective assistance of counsel is based on matter dehors the record and, therefore, cannot be reviewed on direct appeal (*see People v Cancel*, 92 AD3d at 891; *People v Bivens*, 88 AD3d 808, 809; *People v Romero*, 82 AD3d 1013, 1013; *People v Burgess*, 81 AD3d 969, 970; *People v Anthoulis*, 78 AD3d 854, 854-855).

SKELOS, J.P., ANGIOLILLO, DICKERSON and HALL, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court