

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1201

KA 09-02240

PRESENT: SCUDDER, P.J., FAHEY, CARNI, VALENTINO, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DANA BROWN, DEFENDANT-APPELLANT.

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JEANNIE MICHALSKI, CONFLICT DEFENDER, GENESEO, FOR DEFENDANT-APPELLANT.

GREGORY J. MCCAFFREY, DISTRICT ATTORNEY, GENESEO (JOSHUA J. TONRA OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Livingston County Court (Dennis S. Cohen, J.), rendered November 6, 2008. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the fourth degree, attempted grand larceny in the fourth degree and endangering the welfare of a child.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of grand larceny in the fourth degree (Penal Law § 155.30 [1]), attempted grand larceny in the fourth degree (§§ 110.00, 155.30 [1]) and endangering the welfare of a child (§ 260.10 [1]). Contrary to defendant's contention, the record establishes that he knowingly, voluntarily and intelligently waived the right to appeal (*see generally People v Lopez*, 6 NY3d 248, 256). That valid waiver encompasses his further contention that County Court erred in refusing to suppress his statement to the police (*see People v Kemp*, 94 NY2d 831, 833). We note, however, that the certificate of conviction incorrectly reflects that defendant was sentenced under the second count of the indictment to a term of incarceration of two years for attempted grand larceny in the fourth degree. The certificate of conviction must therefore be amended to reflect that he was sentenced to a definite term of incarceration of one year under that count (*see People v Saxton*, 32 AD3d 1286, 1286-1287).

Entered: November 9, 2012

Frances E. Cafarell  
Clerk of the Court