

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

133

KA 12-01360

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JUAN ESTEVEZ-SANTOS, DEFENDANT-APPELLANT.

CARA A. WALDMAN, FAIRPORT, FOR DEFENDANT-APPELLANT.

JASON L. COOK, DISTRICT ATTORNEY, PENN YAN (PATRICK T. CHAMBERLAIN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Yates County Court (W. Patrick Falvey, J.), rendered September, 20, 2011. The judgment convicted defendant, upon his plea of guilty, of criminal use of a firearm in the second degree.

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 criminal use of a firearm in the second degree (Penal Law § 265.08 [2]). "Defendant did not move to withdraw the plea or to vacate the judgment of conviction and thus his contention that the plea was not knowingly, voluntarily and intelligently entered is not preserved for our review" (*People v Anderson*, 34 AD3d 1318, 1318, lv denied 8 NY3d 843). Contrary to defendant's further contention, the record establishes that he knowingly, voluntarily and intelligently waived the right to appeal (*see generally People v Lopez*, 6 NY3d 248, 256), and that valid waiver forecloses any challenge by defendant to the severity of the sentence (*see id.* at 255; *see People v Lococo*, 92 NY2d 825, 827; *People v Hidalgo*, 91 NY2d 733, 737).

Entered: February 7, 2014

Frances E. Cafarell
Clerk of the Court