

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

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KA 07-02058

PRESENT: MARTOCHE, J.P., SMITH, CENTRA, FAHEY, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TIMOTHY E. LANDO, JR., DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (ROBERT P. RICKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

TIMOTHY E. LANDO, JR., DEFENDANT-APPELLANT PRO SE.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (MATTHEW H. JAMES OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Anthony F. Aloi, J.), rendered October 25, 2006. The judgment convicted defendant, upon his plea of guilty, of rape in the first 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 rape in the first degree (Penal Law § 130.35 [1]). Defendant failed to move to withdraw his plea or to vacate the judgment of conviction and thus failed to preserve for our review his contention that his plea was coerced (*see People v Russell*, 55 AD3d 1314, *lv denied* 11 NY3d 930). In any event, that contention lacks merit. Although County Court impressed upon defendant the potential sentence to which he was exposed in the event of a conviction following a trial, the decision whether to either plead guilty or to proceed to trial nevertheless remained with defendant (*see People v Hamilton*, 45 AD3d 1396, *lv denied* 10 NY3d 765). The challenges by defendant in his pro se supplemental brief with respect to the severity of the sentence and the court's suppression ruling are encompassed by his valid waiver of the right to appeal (*see People v Lopez*, 6 NY3d 248, 256; *People v Kemp*, 94 NY2d 831, 833). Finally, the two remaining contentions raised by defendant in his pro se supplemental brief are based on information outside the record on appeal and thus are properly raised by way of a motion pursuant to CPL article 440 (*see People v Barnes*, 56 AD3d 1171, 1171-1172).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court