

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

484

**KA 07-01253**

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, CARNI, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALDO A. DIAZ, DEFENDANT-APPELLANT.

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DONALD R. GERACE, UTICA, FOR DEFENDANT-APPELLANT.

ALDO A. DIAZ, DEFENDANT-APPELLANT PRO SE.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Oneida County Court (Barry M. Donalty, J.), rendered May 16, 2007. The judgment convicted defendant, upon his plea of guilty, of robbery 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 robbery in the first degree (Penal Law § 160.15 [4]). Contrary to the contentions of defendant, we conclude that his waiver of the right to appeal is valid (*see People v Lopez*, 6 NY3d 248, 256), and thus that waiver encompasses his challenge to the severity of the sentence (*see People v Hidalgo*, 91 NY2d 733, 737). Although the further contention of defendant that his plea was not knowingly, voluntarily and intelligently entered survives his waiver of the right to appeal, defendant failed to preserve that contention for our review inasmuch as he failed to move to withdraw his plea or to vacate the judgment of conviction (*see People v Neal*, 56 AD3d 1211). In any event, that contention lacks merit.

We have considered the contentions of defendant in his pro se supplemental brief and conclude that they are without merit.

Entered: May 1, 2009

Patricia L. Morgan  
Clerk of the Court