

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

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KA 09-02242

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANK A. VELARDI, DEFENDANT-APPELLANT.

FRANK J. NEBUSH, JR., PUBLIC DEFENDER, UTICA (ROBERT R. REITTINGER OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered May 29, 2009. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a controlled substance in the third degree.

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

Memorandum: On appeal from a judgment convicting him, upon his guilty plea, of attempted criminal possession of a controlled substance in the third degree (Penal Law §§ 110.00, 220.16 [1]), defendant contends that County Court erred in refusing to suppress contraband that he was seen dumping onto the ground. That contention, however, is encompassed by his valid waiver of the right to appeal and we therefore do not address it (*see People v Kemp*, 94 NY2d 831, 833; *People v Bell*, 89 AD3d 1518; *People v McKeon*, 78 AD3d 1617, 1618, 1v denied 16 NY3d 799).

Entered: March 16, 2012

Frances E. Cafarell
Clerk of the Court