

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

1468

KA 11-00252

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DERRICK WALTON, DEFENDANT-APPELLANT.

LEONARD, CURLEY & WALSH, PLLC, ROME (MARK C. CURLEY 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 (Barry M. Donalty, J.), rendered October 20, 2010. The judgment convicted defendant, upon his plea of guilty, of robbery 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 plea of guilty of robbery in the third degree (Penal Law § 160.05), defendant contends that his plea was not voluntarily, knowingly, and intelligently entered because he did not recite one of the elements of that crime, i.e., that he threatened the witness. Defendant's contention is actually a challenge to the factual sufficiency of the plea allocution, and thus that challenge is encompassed by the valid waiver of the right to appeal (*see People v Peters*, 59 AD3d 928, 928, *lv denied* 12 NY3d 820; *People v Branch*, 49 AD3d 1206, 1206, *lv denied* 10 NY3d 932; *People v Wilson*, 38 AD3d 1348, 1348, *lv denied* 9 NY3d 927).

Entered: December 28, 2012

Frances E. Cafarell
Clerk of the Court