

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

465

KA 10-00815

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEFFREY RUMSEY, DEFENDANT-APPELLANT.

KATHLEEN P. REARDON, ROCHESTER, FOR DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (AMANDA M. CHAFEE OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Joseph W. Latham, J.), rendered March 3, 2010. The judgment convicted defendant, upon his plea of guilty, of aggravated unlicensed operation of a motor vehicle in the first degree and driving while intoxicated.

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 aggravated unlicensed operation of a motor vehicle in the first degree (Vehicle and Traffic Law § 511 [3] [a] [iii]) and driving while intoxicated (§ 1192 [3]). Contrary to the contention of defendant, we conclude that his responses during the plea colloquy and his execution of a written waiver of the right to appeal establish that he intelligently, knowingly, and voluntarily waived his right to appeal (see *People v Kulyeshie*, 71 AD3d 1478, 1478-1479, *lv denied* 14 NY3d 889; *People v Griner*, 50 AD3d 1557, 1558, *lv denied* 11 NY3d 737; see generally *People v Lopez*, 6 NY3d 248, 256). Defendant's contention that he was denied effective assistance of counsel does not survive his plea or his valid waiver of the right to appeal because he "failed to demonstrate that 'the plea bargaining process was infected by [the] allegedly ineffective assistance or that defendant entered the plea because of his attorney['s] allegedly poor performance' " (*People v Wright*, 66 AD3d 1334, 1334, *lv denied* 13 NY3d 912; see *People v Rizek* [appeal No. 1], 64 AD3d 1180, 1180, *lv denied* 13 NY3d 862).

Entered: April 26, 2013

Frances E. Cafarell
Clerk of the Court