

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - January 29, 2018

SHERI S. ROMAN, J.P.
SANDRA L. SGROI
FRANCESCA E. CONNOLLY
LINDA CHRISTOPHER, JJ.

2017-01082

DECISION & ORDER

The People, etc., respondent,
v Daniel Rodrigues Ovalles, appellant.

(Ind. No. 126/16)

Carol Kahn, New York, NY, for appellant.

William V. Grady, District Attorney, Poughkeepsie, NY (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Edward T. McLoughlin, J.), rendered January 6, 2017, convicting him of attempted criminal possession of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's waiver of his right to appeal was valid (*see People v Sanders*, 25 NY3d 337, 341; *People v Lopez*, 6 NY3d 248, 254; *People v Joseph*, 142 AD3d 627, 627). The record of the plea proceeding demonstrates that the County Court made clear to the defendant that an appeal waiver is separate and distinct from those rights automatically forfeited upon a plea of guilty (*see People v Brown*, 122 AD3d 133, 137).

The defendant's valid waiver of his right to appeal precludes appellate review of his claim that the sentence was excessive (*see People v Joseph*, 142 AD3d at 628; *People v Appling*, 94 AD3d 1135, 1136) and that the procedure used to adjudicate him a second felony offender was defective (*see People v Thomas*, 148 AD3d 734, 734; *People v Hicks*, 134 AD3d 854, 854; *People*

May 23, 2018

Page 1.


PEOPLE v RODRIGUES OVALLES, DANIEL

v Kosse, 94 AD3d 908, 908).

The defendant's remaining contention is unpreserved for appellate review, and, in any event, without merit.

ROMAN, J.P., SGROI, CONNOLLY and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court