

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

390

KA 14-00817

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEFFREY D. PAUL, ALSO KNOWN AS JEFFREY D. LIPSON,
DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ALAN WILLIAMS OF
COUNSEL), FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered January 27, 2014. The judgment convicted defendant, upon his plea of guilty, of criminal possession of stolen property in the fourth 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 criminal possession of stolen property in the fourth degree (Penal Law § 165.45). Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid (*see People v Harris*, 125 AD3d 1506, 1506, *lv denied* 26 NY3d 929), we nevertheless conclude that none of defendant's contentions on appeal requires reversal or modification. Defendant failed to preserve for our review his challenge to the amount of restitution imposed "inasmuch as he did not object to that amount at sentencing . . . , and in any event he affirmatively waived his right to a restitution hearing" (*People v Tessitore*, 101 AD3d 1621, 1622, *lv denied* 20 NY3d 1104). In addition, "[b]y failing to request a hearing on the issue whether he had the ability to pay the amount of restitution ordered by County Court, defendant failed to preserve for our review his further contention that the court failed to consider his ability to pay the restitution" (*People v Dillon*, 90 AD3d 1468, 1468-1469, *lv denied* 19 NY3d 1025; *see People v Pugliese*, 113 AD3d 1112, 1112, *lv denied* 23 NY3d 1066). Moreover, although we agree with defendant that his release to parole supervision does not render his challenge to the severity of his sentence moot inasmuch as he remains under the control of the Parole Board until his sentence has terminated (*see People v Sebring*, 111 AD3d 1346, 1347, *lv denied* 22 NY3d 1159), we nevertheless conclude

that his challenge is without merit.

Entered: May 6, 2016

Frances E. Cafarell
Clerk of the Court