

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

548

KA 16-02288

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, AND NEMOYER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANK K. WISNIEWSKI, DEFENDANT-APPELLANT.

NORMAN P. EFFMAN, PUBLIC DEFENDER, WARSAW (MARSHALL A. KELLY OF COUNSEL), FOR DEFENDANT-APPELLANT.

DONALD G. O'GEEN, DISTRICT ATTORNEY, WARSAW (VINCENT A. HEMMING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered December 17, 2015. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his guilty plea of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]) and criminal possession of a controlled substance in the third degree (§ 220.16 [1]). Defendant's contention that County Court erred in failing to conduct an audibility hearing and to render a decision thereon does not survive his guilty plea (*see People v Gillett*, 105 AD3d 1444, 1444 [4th Dept 2013]). By pleading guilty, defendant forfeited review of the merits of his contention regarding the audibility of certain evidence (*see People v Dunkins*, 231 AD2d 587, 588 [2d Dept 1996], *lv denied* 89 NY2d 863 [1996]; *see also People v Alvarado*, 103 AD3d 1101, 1101 [4th Dept 2013], *lv denied* 21 NY3d 910 [2013]).

Entered: April 27, 2018

Mark W. Bennett
Clerk of the Court