

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

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KA 17-00206

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LORENZO ARLINE, DEFENDANT-APPELLANT.

REEVE BROWN PLLC, ROCHESTER (GUY A. TALIA OF COUNSEL), FOR
DEFENDANT-APPELLANT.

MICHAEL J. FLAHERTY, JR., SPECIAL DISTRICT ATTORNEY, WARSAW, FOR
RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered June 15, 2016. The judgment convicted defendant, upon his plea of guilty, of attempted promoting prison contraband in the first 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 attempted promoting prison contraband in the first degree (Penal Law §§ 110.00, 205.25 [2]). Although defendant's contention that the plea was not knowingly, intelligently and voluntarily entered survives his waiver of the right to appeal (see *People v Gill*, 149 AD3d 1597, 1597 [4th Dept 2017], *lv denied* 29 NY3d 1127 [2017]), defendant failed to move to withdraw his guilty plea or to vacate the judgment of conviction on that ground and thus failed to preserve that contention for our review (see *People v Morrison*, 78 AD3d 1615, 1616 [4th Dept 2010], *lv denied* 16 NY3d 834 [2011]). We decline to exercise our power to review defendant's contention as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]).

Entered: February 1, 2019

Mark W. Bennett
Clerk of the Court