

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

871

**KA 21-00373**

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, WINSLOW, AND BANNISTER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KELLY M. RADOS, DEFENDANT-APPELLANT.

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THE SAGE LAW FIRM GROUP PLLC, BUFFALO (KATHRYN FRIEDMAN OF COUNSEL),  
FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (SUSAN M. HOWARD OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Orleans County Court (Sanford A. Church, J.), rendered February 24, 2021. The judgment convicted defendant upon a plea of guilty of criminal possession of a forged instrument in the third degree.

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

Memorandum: On appeal from a judgment convicting her upon her plea of guilty of criminal possession of a forged instrument in the third degree (Penal Law § 170.20), defendant contends that County Court erred in denying without an evidentiary hearing her pro se motion to withdraw her guilty plea. We reject that contention.

"When a defendant moves to withdraw a guilty plea, the nature and extent of the fact-finding inquiry 'rest[s] largely in the discretion of the Judge to whom the motion is made' " (*People v Brown*, 14 NY3d 113, 116 [2010], quoting *People v Tinsley*, 35 NY2d 926, 927 [1974]; see *People v Manor*, 27 NY3d 1012, 1013-1014 [2016]). "Only in the rare instance will a defendant be entitled to an evidentiary hearing; often a limited interrogation by the court will suffice. The defendant should be afforded [a] reasonable opportunity to present his [or her] contentions and the court should be enabled to make an informed determination" (*Tinsley*, 35 NY2d at 927).

Here, the record establishes that defendant was afforded such an opportunity and that the court was able to make an informed determination of the motion (see *People v Weems*, 203 AD3d 1684, 1684 [4th Dept 2022], *lv denied* 38 NY3d 1036 [2022]; *People v Soriano*, 178 AD3d 1376, 1377 [4th Dept 2019], *lv denied* 34 NY3d 1163 [2020]; *People v Sparcino*, 78 AD3d 1508, 1509 [4th Dept 2010], *lv denied* 16 NY3d 746 [2011]). Further, the court did not abuse its discretion in denying

the motion. Although defendant claimed innocence and coercion at sentencing, she "admitted each element of the offense during [her] plea allocution and did not claim either that [she] was innocent or that [she] had been coerced by defense counsel at that time" (*Sparcino*, 78 AD3d at 1509; see *People v Steele*, 167 AD3d 1514, 1515 [4th Dept 2018], *lv denied* 33 NY3d 954 [2019]; *People v Newsome*, 140 AD3d 1695, 1695 [4th Dept 2016]). To the extent that defendant suggested that she was pressured into accepting the plea by defense counsel, that suggestion was "belied by [her] statements during the plea proceeding[]" and, in addition, defendant's "conclusory and unsubstantiated claim[s] of innocence [were] belied by [her] admissions during the plea colloquy" (*People v Garner*, 86 AD3d 955, 955 [4th Dept 2011]; see *People v Haffiz*, 19 NY3d 883, 884-885 [2012]; *Sparcino*, 78 AD3d at 1509).

We have considered defendant's remaining contention and conclude that it does not warrant any relief.