

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

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KA 20-00414

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, OGDEN, AND NOWAK, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DANIEL NEGRON, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (John L. DeMarco, J.), rendered November 7, 2019. The judgment convicted defendant upon his plea of guilty of criminal contempt 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 a plea of guilty of criminal contempt in the first degree (Penal Law § 215.51 [b] [v]). We affirm. Initially, as defendant contends and the People correctly concede, defendant's waiver of the right to appeal is invalid because County Court "mischaracterized the nature of the right that defendant was being asked to cede, portraying the waiver as an absolute bar to defendant taking an appeal, and there was no clarification that appellate review remained available for certain issues" (*People v Hussein*, 192 AD3d 1705, 1706 [4th Dept 2021], *lv denied* 37 NY3d 965 [2021]; *see People v Thomas*, 34 NY3d 545, 565-566 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Johnson*, 192 AD3d 1494, 1495 [4th Dept 2021], *lv denied* 37 NY3d 965 [2021]).

By pleading guilty before the court decided his pro se motion—which was not expressly adopted by defense counsel in the omnibus motion—to dismiss the indictment on the ground that the grand jury proceedings were tainted by prosecutorial misconduct, defendant abandoned that claim and is foreclosed from pursuing the merits thereof on appeal (*see People v Johnson*, 195 AD3d 1420, 1422 [4th Dept 2021], *lv denied* 37 NY3d 1146 [2021]; *People v Hardy*, 173 AD3d 1649, 1649-1650 [4th Dept 2019], *lv denied* 34 NY3d 932 [2019]; *see generally People v Hansen*, 95 NY2d 227, 230 [2000]).

Defendant contends that he was denied effective assistance of

counsel due to defense counsel's failure to seek dismissal of the indictment on the ground that the grand jury proceedings were infected by prosecutorial misconduct. Defendant's contention does not survive his guilty plea because defendant has not "demonstrate[d] that the plea bargaining process was infected by [the] allegedly ineffective assistance or that [he] entered the plea because of [his] attorney['s] allegedly poor performance" (*People v Jackson*, 202 AD3d 1447, 1449 [4th Dept 2022], *lv denied* 38 NY3d 951 [2022] [internal quotation marks omitted]; see *People v Coleman*, 178 AD3d 1377, 1378 [4th Dept 2019], *lv denied* 35 NY3d 1026 [2020]). Defendant failed to show a reasonable probability that, but for defense counsel's alleged error, defendant would not have pleaded guilty and would have insisted on going to trial (see *Coleman*, 178 AD3d at 1378; *People v Yates*, 173 AD3d 1849, 1850 [4th Dept 2019]).

Entered: November 17, 2023

Ann Dillon Flynn
Clerk of the Court