

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

164

KA 23-01700

PRESENT: CURRAN, J.P., MONTOUR, SMITH, DELCONTE, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SHYHEIM RODRIGUEZ, DEFENDANT-APPELLANT.

MICHAEL J. STACHOWSKI, P.C., BUFFALO (MICHAEL J. STACHOWSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. KEANE, ACTING DISTRICT ATTORNEY, BUFFALO (APRIL J. ORLOWSKI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Debra L. Givens, A.J.), rendered August 31, 2023. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the third degree.

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

Memorandum: On appeal from a judgment convicting him, upon his plea of guilty, of criminal possession of a weapon in the third degree (Penal Law § 265.02 [1]), defendant contends that his plea was involuntary because Supreme Court did not advise him during the plea colloquy that he would be forfeiting his right against self-incrimination by pleading guilty. Defendant “failed to preserve that contention for our review because . . . he failed to move to withdraw the plea or to vacate the judgment of conviction” (*People v Yanga*, 213 AD3d 1276, 1277 [4th Dept 2023], *lv denied* 40 NY3d 932 [2023] [internal quotation marks omitted]; see *People v Martin*, 222 AD3d 1414, 1415 [4th Dept 2023], *lv denied* 41 NY3d 966 [2024]; *People v Ramos-Perez*, 188 AD3d 1741, 1742 [4th Dept 2020], *lv denied* 36 NY3d 1099 [2021]). In any event, defendant’s contention is without merit. After reviewing the record as a whole and the circumstances of the plea in its totality, we conclude that the plea was knowing, intelligent, and voluntary (see *Yanga*, 213 AD3d at 1277; *People v Barnes*, 206 AD3d 1713, 1714-1715 [4th Dept 2022], *lv denied* 38 NY3d 1132 [2022]).

Entered: March 21, 2025

Ann Dillon Flynn
Clerk of the Court