

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

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KA 23-00838

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, NOWAK, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID LLOYD, JR., DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (TONYA PLANK OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered November 7, 2022. The judgment convicted defendant upon a plea of guilty of criminal possession of a weapon in the second degree.

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

Memorandum: On appeal from a judgment convicting him upon a plea of guilty of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]), defendant contends that Supreme Court erred in refusing to suppress physical evidence obtained as the result of a traffic stop because there was no evidence connecting him to the gun found after the stop. We agree with the People that defendant failed to preserve that contention for our review inasmuch as he did not raise that ground as a basis for suppression in his omnibus motion (see *People v Carter*, 142 AD3d 1342, 1342 [4th Dept 2016]; *People v Schluter*, 136 AD3d 1363, 1363 [4th Dept 2016], *lv denied* 27 NY3d 1138 [2016]), and we decline to exercise our power to review it as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]).

Defendant further contends that he was denied effective assistance of counsel. To the extent that defendant's contention survives his guilty plea, we conclude that it is without merit. "A claim of ineffective assistance of counsel survives a plea of guilty only if the plea bargaining process was infected by [the] allegedly ineffective assistance or [if] defendant entered the plea because of [the] attorney['s] allegedly poor performance" (*People v Johnson*, 229 AD3d 1300, 1302 [4th Dept 2024], *lv denied* 42 NY3d 1020 [2024] [internal quotation marks omitted]; see *People v Judd*, 111 AD3d 1421, 1422-1423 [4th Dept 2013], *lv denied* 23 NY3d 1039 [2014]). "[I]n the context of a guilty plea, a defendant has been afforded meaningful

representation when [they] received an advantageous plea and nothing in the record casts doubt upon the apparent effectiveness of [defense] counsel" (*People v Dale*, 142 AD3d 1287, 1290 [4th Dept 2016], *lv denied* 28 NY3d 1144 [2017] [internal quotation marks omitted]). Here, defense counsel secured a favorable plea bargain for defendant, including a sentence of only one year more than the minimum term of imprisonment, and nothing in the record casts doubt on the apparent effectiveness of counsel (see *Johnson*, 229 AD3d at 1302).

We have reviewed defendant's remaining contention and conclude that it does not warrant modification or reversal of the judgment.