

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

781

KA 21-01197

PRESENT: CURRAN, J.P., BANNISTER, OGDEN, DELCONTE, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANKLIN CHAMBERS, DEFENDANT-APPELLANT.

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

MICHAEL J. KEANE, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Susan M. Eagan, J.), rendered August 18, 2021. The judgment convicted defendant, upon his plea of guilty, of attempted burglary 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 plea of guilty, of attempted burglary in the first degree (Penal Law §§ 110.00, 140.30 [4]). We note at the outset that defendant does not challenge the validity of his waiver of the right to appeal (*see People v Rosado-Thomas*, 181 AD3d 1166, 1167 [4th Dept 2020], *lv denied* 35 NY3d 1048 [2020]). Defendant contends that his guilty plea was involuntary because, during the plea colloquy, County Court referenced his right to a trial, not his right to a jury trial (*see generally Boykin v Alabama*, 395 US 238, 243 [1969]). Although that contention survives the unchallenged appeal waiver (*see People v Thomas*, 34 NY3d 545, 558 [2019], *cert denied* – US –, 140 S Ct 2634 [2020]; *People v Seymore*, 188 AD3d 1767, 1768 [4th Dept 2020], *lv denied* 36 NY3d 1100 [2021]), defendant failed to preserve his contention for our review because he did not move to withdraw his guilty plea or to vacate the judgment of conviction on that ground (*see People v Cunningham*, 213 AD3d 1270, 1271 [4th Dept 2023], *lv denied* 39 NY3d 1110 [2023]; *People v Thompson*, 206 AD3d 1628, 1629 [4th Dept 2022], *lv denied* 38 NY3d 1153 [2022]). In any event, defendant's contention is without merit (*see People v Hinkle*, 240 AD3d 1428, 1429 [4th Dept 2025]; *People v Barnes*, 206 AD3d 1713, 1714 [4th Dept 2022], *lv denied* 38 NY3d 1132 [2022]).

Defendant also contends that the court should have suppressed identification evidence on the ground that the show-up voice identification procedures that were conducted by the police shortly

after the incident in question were unduly suggestive. Defendant's unchallenged waiver of the right to appeal forecloses our review of that contention (see *People v Reynolds*, 236 AD3d 1475, 1475 [4th Dept 2025]; *Rosado-Thomas*, 181 AD3d at 1167).