

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

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**KA 25-00294**

PRESENT: BANNISTER, J.P., MONTOUR, SMITH, NOWAK, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL J. DESINO, DEFENDANT-APPELLANT.

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THOMAS L. PELYCH, HORNELL, FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (KAYLAN C. PORTER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Ontario County (Craig J. Doran, J.), rendered November 13, 2024. The judgment convicted defendant upon his plea of guilty of criminal possession of a forged instrument in the second 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 criminal possession of a forged instrument in the second degree (Penal Law § 170.25). We affirm.

At the outset, we conclude that there is no reason for us to address defendant's contention that his waiver of the right to appeal is invalid, inasmuch as defendant's substantive contention challenging the plea would survive even a valid waiver of the right to appeal (see *People v Williams*, 198 AD3d 1308, 1309 [4th Dept 2021], *lv denied* 37 NY3d 1149 [2021]; see also *People v Thompson*, 219 AD3d 1666, 1667 [4th Dept 2023], *lv denied* 41 NY3d 944 [2024]; *People v Brown*, 151 AD3d 1951, 1951-1952 [4th Dept 2017], *lv denied* 29 NY3d 1124 [2017]).

Defendant contends that his plea was not knowingly, intelligently, and voluntarily entered because he did not understand the plea proceeding due to his limited education, the complexity of the rights he was forfeiting, and his lack of sufficient time to discuss the matter with counsel. By not moving to withdraw the plea or to vacate the judgment of conviction, defendant failed to preserve that contention (see *People v Seymore*, 188 AD3d 1767, 1768 [4th Dept 2020], *lv denied* 36 NY3d 1100 [2021]; *Brown*, 151 AD3d at 1952). We

conclude in any event that defendant's contention is belied by his statements during the plea colloquy (see *Brown*, 151 AD3d at 1952).

Entered: February 11, 2026

Ann Dillon Flynn  
Clerk of the Court