

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

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**KA 23-00585**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL L. JACKSON, JR., ALSO KNOWN AS  
MICHAEL L. JACKSON, ALSO KNOWN AS MICHAEL  
LOREN JACKSON, JR., DEFENDANT-APPELLANT.  
(APPEAL NO. 1.)

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (LEAH N. FARWELL OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

KEVIN T. FINNELL, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Genesee County Court (Melissa Lightcap Cianfrini, J.), rendered March 8, 2023. The judgment convicted defendant upon a plea of guilty of bail jumping in the second degree.

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

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of bail jumping in the second degree (Penal Law § 215.56). In appeal No. 2, he appeals from a judgment convicting him upon his plea of guilty in the same plea proceeding of attempted burglary in the first degree (Penal Law §§ 110.00, 140.30 [2]). We affirm in both appeals.

Defendant contends in each appeal that County Court erred in enhancing his sentence without conducting a sufficient inquiry into his alleged violation of the conditions of the plea agreement. Specifically, the court concluded that defendant violated the conditions of the plea when he was arrested for possessing contraband while detained in jail. Defendant's contention that the court did not conduct a proper inquiry before making that determination survives even a valid waiver of the right to appeal (*see People v Campbell*, 244 AD3d 1826, 1827 [4th Dept 2025]; *People v Huggins*, 45 AD3d 1380, 1380 [4th Dept 2007], *lv denied* 9 NY3d 1006 [2007]). On the merits, however, we reject defendant's contention. The record establishes that "there was a sufficient inquiry made to support 'the existence of a legitimate basis for the arrest' " (*People v Fumia*, 104 AD3d 1281, 1281 [4th Dept 2013], *lv denied* 21 NY3d 1004 [2013], quoting *People v*

*Outley*, 80 NY2d 702, 713 [1993]; see *People v Forest*, 148 AD3d 1585, 1586 [4th Dept 2017], *lv denied* 29 NY3d 1091 [2017]). Contrary to defendant's contention, under the circumstances of this case, the court was not required to conduct an evidentiary hearing, and we further note that "[b]oth defendant and [defense] counsel were given ample opportunity to refute the . . . assertions that defendant had violated the plea terms" (*People v Albergetti*, 17 NY3d 748, 750 [2011]; see *Campbell*, 244 AD3d at 1827; *People v Scott*, 200 AD3d 1729, 1730 [4th Dept 2021]).

Contrary to defendant's further contention in each appeal, we conclude that the record establishes that defendant knowingly, voluntarily, and intelligently waived his right to appeal (see *People v Brinkman*, 240 AD3d 1431, 1431-1432 [4th Dept 2025], *lv denied* 44 NY3d 1027 [2025]; see generally *People v Thomas*, 34 NY3d 545, 559-564 [2019], *cert denied* 589 US 1302 [2020]). We note at the outset that the court used the appropriate model colloquy with respect to the waiver of the right to appeal (see NY Model Colloquies, Waiver of Right to Appeal; see generally *Thomas*, 34 NY3d at 567; *People v Edmonds*, 229 AD3d 1275, 1277 [4th Dept 2024], *lv denied* 43 NY3d 930 [2025]). Contrary to defendant's assertion, the court properly explained that defendant retained the right to take an appeal; that his conviction and sentence would "normally be final" because he was giving up the right to appellate review of "most claims of error," including the severity of the sentence; and that "a limited number of claims" would survive the appeal waiver, such as the voluntariness of the plea, the validity of the appeal waiver, the legality of the sentence, the jurisdiction of the court, defendant's competency to stand trial, and the constitutional right to a speedy trial (see *Thomas*, 34 NY3d at 567; *Edmonds*, 229 AD3d at 1277).

Additionally, the court's oral colloquy was supplemented by a detailed written waiver that, inter alia, accurately explained the rights waived and noted that some rights were retained despite the waiver and, in doing so, used the phrase "waiver of the right to raise issues on appeal," thereby employing language that "more precisely" reflected that the waiver merely represented "a narrowing of the issues for appellate review" (*Thomas*, 34 NY3d at 559; see *Edmonds*, 229 AD3d at 1277-1278). Furthermore, the record establishes that the court ascertained that defendant, "before signing the written waiver form, had reviewed the contents thereof with [his] attorney and understood the appellate rights [he] was giving up [and retaining] as a result of the waiver" (*People v Correia*, 240 AD3d 1440, 1441-1442 [4th Dept 2025], *lv denied* 44 NY3d 992 [2025]; cf. *People v Bradshaw*, 18 NY3d 257, 262 [2011]).

We also reject defendant's contention in each appeal that he did not validly waive his right to appeal inasmuch as he did not receive consideration for the waiver. To the contrary, the record establishes that defendant received consideration in exchange for the waiver inasmuch as the plea agreement resulted in, among other things, defendant pleading guilty to a reduced charge in full satisfaction of one of the indictments, and defendant also receiving a sentence promise (see *Campbell*, 244 AD3d at 1828-1829; *People v Allen*, 174 AD3d

1456, 1456 [4th Dept 2019], *lv denied* 34 NY3d 978 [2019]; *People v Frank*, 258 AD2d 900, 900 [4th Dept 1999], *lv denied* 93 NY2d 924 [1999]).

We thus conclude that "all the relevant circumstances reveal a knowing and voluntary waiver" (*Thomas*, 34 NY3d at 563; *see Edmonds*, 229 AD3d at 1278) and, because the court advised defendant of the maximum sentence that could be imposed if he violated the plea agreement, that waiver encompasses his further challenge in each appeal to the severity of the enhanced sentence (*see People v Durinko*, 239 AD3d 1347, 1348 [4th Dept 2025], *lv denied* 44 NY3d 993 [2025]; *People v Roberto*, 224 AD3d 1367, 1368 [4th Dept 2024]).