

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

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**KA 24-00486**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DENNIS TIMMONS, DEFENDANT-APPELLANT.

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KELIANN M. ARGY, ORCHARD PARK, FOR DEFENDANT-APPELLANT.

VINCENT A. HEMMING, WARSAW (MATTHEW J. DILLON OF COUNSEL), FOR  
RESPONDENT.

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Appeal from a judgment of the Wyoming County Court (Melissa Lightcap Cianfrini, A.J.), rendered January 24, 2024. The judgment convicted defendant, upon his plea of guilty, of assault 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 assault in the second degree (Penal Law § 120.05 [7]). We note at the outset that defendant does not challenge the validity of his waiver of the right to appeal (*see People v Chambers*, 243 AD3d 1289, 1289 [4th Dept 2025]). Although defendant's challenge to the voluntariness of the plea survives his unchallenged waiver of the right to appeal (*see People v McMurtry*, 224 AD3d 1310, 1310 [4th Dept 2024], *lv denied* 41 NY3d 984 [2024]; *People v Shaw*, 133 AD3d 1312, 1313 [4th Dept 2015], *lv denied* 26 NY3d 1150 [2016]), defendant failed to preserve his contention for our review because he did not move to withdraw the plea or to vacate the judgment of conviction (*see People v Fernandez*, 218 AD3d 1257, 1259 [4th Dept 2023], *lv denied* 40 NY3d 1012 [2023]; *People v Toney*, 153 AD3d 1583, 1583-1584 [4th Dept 2017], *lv denied* 30 NY3d 1064 [2017]). Contrary to defendant's further contention, this case does not fall within the rare exception to the preservation requirement set forth in *People v Lopez* (71 NY2d 662, 666 [1988]; *see People v Santos*, 230 AD3d 1586, 1586 [4th Dept 2024], *lv denied* 43 NY3d 932 [2025]). We decline to exercise our power to review defendant's contention as a matter of discretion in the interest of justice (*see CPL 470.15 [3] [c]*).

Lastly, defendant's contention that County Court made an insufficient inquiry into the circumstances of the offense, particularly the issue of intent, is actually a challenge addressed to the factual sufficiency of the plea allocution (*see People v*

*Romanchik*, 242 AD3d 1624, 1626 [4th Dept 2025]; *People v Clemons*, 201 AD3d 1355, 1355 [4th Dept 2022], *lv denied* 38 NY3d 1032 [2022]). That contention is encompassed by defendant's unchallenged waiver of the right to appeal (see *People v Parsons*, 199 AD3d 1486, 1486 [4th Dept 2021], *lv denied* 37 NY3d 1163 [2022]).

Entered: March 27, 2026

Ann Dillon Flynn  
Clerk of the Court