

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

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KA 24-01473

PRESENT: BANNISTER, J.P., MONTOUR, GREENWOOD, NOWAK, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHRISTOPHER O'NEAL, JR., DEFENDANT-APPELLANT.

RYAN JAMES MULDOON, AUBURN, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MERIDETH H. SMITH OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered April 29, 2024. The judgment convicted defendant, upon his 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: Defendant appeals from a judgment convicting him, upon his guilty plea, of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Contrary to defendant's contention, he validly waived his right to appeal (*see People v Moody*, 240 AD3d 1323, 1324 [4th Dept 2025], *lv denied* 44 NY3d 1012 [2025]; *People v Williams*, 237 AD3d 1581, 1582 [4th Dept 2025], *lv denied* 44 NY3d 985 [2025]; *see generally People v Thomas*, 34 NY3d 545, 564-566 [2019], *cert denied* 589 US 1302 [2020]). While defendant is correct that Supreme Court failed to ascertain defendant's understanding of the contents of the written waiver of the right to appeal on the record, that "deficiency . . . is of no moment where, as here, the oral waiver was adequate" (*People v Brinson*, 240 AD3d 1376, 1377 [4th Dept 2025], *lv denied* 44 NY3d 1064 [2025]). Defendant's valid waiver of the right to appeal encompasses his challenge to the severity of the sentence (*see People v Lopez*, 6 NY3d 248, 256 [2006]; *People v Hidalgo*, 91 NY2d 733, 737 [1998]).

Defendant further contends that the court abused its discretion in denying his motion to withdraw his guilty plea on the ground of ineffective assistance of counsel without holding a hearing. We reject that contention. As an initial matter, we note that defendant's contention survives his valid waiver of the right to appeal " 'only insofar as he contends that his plea was infected by the allegedly ineffective assistance and that he entered the plea because of his attorney's allegedly poor performance' " (*People v*

Strickland, 103 AD3d 1178, 1178 [4th Dept 2013]; see *People v Wong*, 151 AD3d 1853, 1854 [4th Dept 2017], *lv denied* 30 NY3d 954 [2017]). "When a defendant moves to withdraw a guilty plea, the nature and extent of the fact-finding inquiry rest[] largely in the discretion of the Judge to whom the motion is made and a hearing will be granted only in rare instances" (*People v Brown*, 14 NY3d 113, 116 [2010] [internal quotation marks omitted]; see *People v Ciskiewicz*, 219 AD3d 1696, 1696 [4th Dept 2023], *lv denied* 40 NY3d 1091 [2024]). Here, "nothing in the record casts doubt on the apparent effectiveness of counsel" (*People v Raghna*, 185 AD3d 1411, 1413 [4th Dept 2020], *lv denied* 35 NY3d 1115 [2020] [internal quotation marks omitted]), "[d]efendant admitted each element of the offense[] during his plea allocution and did not claim either that he was innocent or that he had been coerced[,] . . . [and defendant's claims] presented credibility issues that the court could properly resolve without a hearing" (*People v Newsome*, 140 AD3d 1695, 1696 [4th Dept 2016] [internal quotation marks omitted]).