

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

1212

KA 18-02184

PRESENT: WHALEN, P.J., SMITH, TROUTMAN, BANNISTER, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT BENTLEY, DEFENDANT-APPELLANT.

HAYDEN DADD, CONFLICT DEFENDER, GENESEO (BRADLEY E. KEEM OF COUNSEL),
FOR DEFENDANT-APPELLANT.

GREGORY J. MCCAFFREY, DISTRICT ATTORNEY, GENESEO (JOSHUA J. TONRA OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Livingston County Court (Dennis S. Cohen, J.), rendered October 25, 2018. The judgment convicted defendant upon a plea of guilty of offering a false instrument for filing 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 offering a false instrument for filing in the first degree (Penal Law § 175.35 [1]). As a preliminary matter, we note that, as the People correctly concede, defendant did not waive his right to appeal (*see People v Dangerfield*, 140 AD3d 1626, 1626 [4th Dept 2016], *lv denied* 28 NY3d 928 [2016]).

Defendant's contention that his guilty plea was not knowing, voluntary, and intelligent because he did not give an affirmative verbal acknowledgment of understanding when County Court explained to him his *Boykin* rights (*see Boykin v Alabama*, 395 US 238 [1969]) is not preserved for our review inasmuch as defendant did not move to withdraw his plea or to vacate the judgment of conviction on that ground (*see People v Hampton*, 142 AD3d 1305, 1306 [4th Dept 2016], *lv denied* 28 NY3d 1124 [2016], citing, *inter alia*, *People v Conceicao*, 26 NY3d 375, 382 [2015]; *see also People v Brown*, 151 AD3d 1951, 1951-1952 [4th Dept 2017], *lv denied* 29 NY3d 1124 [2017]). Contrary to defendant's 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 generally People v Mobayed*, 158 AD3d 1221, 1222 [4th Dept 2018], *lv denied* 31 NY3d 1015 [2018]).

We have reviewed defendant's remaining contentions and conclude

that none warrants modification or reversal of the judgment.

Entered: February 5, 2021

Mark W. Bennett
Clerk of the Court