

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

1035

KA 14-01481

PRESENT: WHALEN, P.J., CENTRA, DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

VINCENT A. WALTERS, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DREW R. DUBRIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (James J. Piampiano, J.), rendered May 15, 2014. The judgment convicted defendant, upon his plea of guilty, of manslaughter in the first 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 manslaughter in the first degree (Penal Law § 125.20 [1]) and, in appeal No. 2, he appeals from a judgment convicting him upon his guilty plea of robbery in the first degree (§ 160.15 [3]). In both appeals, defendant's valid waiver of the right to appeal encompasses his contention that County Court erred in refusing to suppress his statements to police (*see People v Kemp*, 94 NY2d 831, 833; *People v Lynn*, 144 AD3d 1491, 1492, *lv denied* 28 NY3d 1186; *People v Rosado*, 26 AD3d 891, 892, *lv denied* 6 NY3d 838), as well as his contention that the sentence is unduly harsh and severe (*see People v Lopez*, 6 NY3d 248, 255-256; *People v Hidalgo*, 91 NY2d 733, 737; *People v Morales*, 148 AD3d 1638, 1639, *lv denied* 29 NY3d 1083).

Although defendant's contention in both appeals that the pleas were not knowingly, voluntarily, and intelligently entered survives his valid waiver of the right to appeal (*see People v Green*, 122 AD3d 1342, 1343), that contention is not preserved for our review (*see People v Darling*, 125 AD3d 1279, 1279, *lv denied* 25 NY3d 1071). Contrary to defendant's further contention, his youthful age, on its own, did not deny him the capacity either to plead guilty or to subsequently seek to withdraw his pleas such that the preservation rule should not apply (*see generally People v Peque*, 22 NY3d 168, 182;

People v Lopez, 71 NY2d 662, 665-666). In any event, the record establishes that defendant's pleas were knowing, voluntary, and intelligent (see *Green*, 122 AD3d at 1343).

Entered: September 29, 2017

Mark W. Bennett
Clerk of the Court