

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

873

**KA 15-00953**

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, LINDLEY, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD WALCOTT, DEFENDANT-APPELLANT.

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KATHLEEN A. KUGLER, CONFLICT DEFENDER, LOCKPORT (EDWARD P. PERLMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

CAROLINE A. WOJTASZEK, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Niagara County Court (Sara S. Farkas, J.), rendered January 9, 2015. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the fourth degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of grand larceny in the fourth degree (Penal Law § 155.30 [5]), defendant contends that County Court abused its discretion in denying his motion to withdraw his guilty plea based upon his claim of innocence. Although that contention survives defendant's valid waiver of the right to appeal (*see People v Colon*, 122 AD3d 1309, 1309 [4th Dept 2014], *lv denied* 25 NY3d 1200 [2015]), we conclude that it lacks merit. " 'A defendant is not entitled to withdraw his guilty plea based on a subsequent unsupported claim of innocence[] where[, as here,] the guilty plea was voluntarily made with the advice of counsel following an appraisal of all the relevant factors' " (*People v Fisher*, 28 NY3d 717, 726 [2017]). "The assertion of innocence by defendant in support of the motion is belied by his admission of guilt during the plea colloquy" (*People v Conde*, 34 AD3d 1347, 1347 [4th Dept 2006]; *see People v Newkirk*, 133 AD3d 1364, 1364 [4th Dept 2015], *lv denied* 26 NY3d 1148 [2016]; *People v Williams*, 103 AD3d 1128, 1129 [4th Dept 2013], *lv denied* 21 NY3d 915 [2013]; *see generally People v Haffiz*, 19 NY3d 883, 884-885 [2012]).

Entered: September 28, 2018

Mark W. Bennett  
Clerk of the Court