

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

425

KA 21-01370

PRESENT: WHALEN, P.J., LINDLEY, CURRAN, BANNISTER, AND GREENWOOD, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FARON SZYMANSKI, DEFENDANT-APPELLANT.

ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (LYLE T. HAJDU OF COUNSEL),
FOR DEFENDANT-APPELLANT.

DONALD G. O'GEEN, DISTRICT ATTORNEY, WARSAW (V. CHRISTOPHER EAGGLESTON
OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered March 5, 2021. The judgment convicted defendant upon a plea of guilty of course of sexual conduct against a child in the second degree (two counts).

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 two counts of course of sexual conduct against a child in the second degree (Penal Law § 130.80 [1] [b]). Contrary to defendant's contention, the plea colloquy establishes that he knowingly, voluntarily, and intelligently waived the right to appeal (see *People v Mess*, 186 AD3d 1069, 1069 [4th Dept 2020]; see generally *People v Thomas*, 34 NY3d 545, 564 [2019], cert denied – US –, 140 S Ct 2634 [2020]). Although defendant's challenge to the voluntariness of his plea survives his valid waiver of the right to appeal (see *Thomas*, 34 NY3d at 558; *People v Seaberg*, 74 NY2d 1, 10 [1989]), by failing to move to withdraw the plea or to vacate the judgment of conviction, defendant failed to preserve that challenge for our review (see *People v Garcia-Cruz*, 138 AD3d 1414, 1414-1415 [4th Dept 2016], lv denied 28 NY3d 929 [2016]; see also *People v Lopez*, 71 NY2d 662, 665 [1988]). This case does not fall within the rare exception to the preservation requirement (see generally *Lopez*, 71 NY2d at 666). Further, defendant's valid waiver of the right to appeal precludes our review of his challenge to the severity of his sentence (see *People v Lopez*, 6 NY3d 248, 255 [2006]).

Entered: June 9, 2023

Ann Dillon Flynn
Clerk of the Court