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No. 144
The People &c.,
Respondent,
v.
Rashad McNair,
Appellant.

Paul Wiener, for appellant.
Marc Krupnick, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Defendant pleaded guilty to one count of forgery in the second degree in violation of Penal Law § 170.10 (1) relative to his execution of an application to open a joint bank account. On appeal, defendant claims that the trial court erred in accepting

his plea because his statements to the court negated the element of intent to defraud. Defendant neither moved to withdraw his plea nor to vacate the judgment of conviction; rather, he sought to challenge the sufficiency of the plea allocution for the first time on direct appeal. In doing so, he seeks to invoke the "narrow exception" to the preservation requirement delineated in People v Lopez (71 NY2d 662 [1988]). That exception applies only "[i]n that rare case . . . where the defendant's recitation of the facts underlying the crime pleaded to casts significant doubt upon the defendant's guilt or otherwise calls into question the voluntariness of the plea," thereby imposing on the trial court "a duty to inquire further to ensure that defendant's guilty plea is knowing and voluntary" (id. at 666 [citations omitted]). When such a situation arises, if the trial court accepts the plea without conducting the required further inquiry, a defendant is entitled to challenge the allocution's sufficiency on direct appeal, even if the defendant fails to make a post-judgment motion (id.).

We agree with defendant that, during the plea allocution, he initially made remarks that "cast significant doubt" on his guilt concerning the element of intent to defraud, thereby triggering the trial court's duty to conduct a further inquiry to ensure that defendant's plea was knowingly and voluntarily made. The plea minutes demonstrate that the trial court properly conducted such an inquiry and found that defendant

possessed the necessary criminal intent to defraud. Having failed to move thereafter to withdraw his plea, defendant waived any further challenge to the allocution, and thus no issue is preserved for our review (see Lopez, 71 NY2d at 668).

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Order affirmed, in a memorandum. Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur. Chief Judge Lippman took no part.

Decided October 22, 2009