

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D28382  
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Submitted - September 8, 2010

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
L. PRISCILLA HALL  
SHERI S. ROMAN, JJ.

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2007-01730

DECISION & ORDER

The People, etc., respondent,  
v Michael T. Henry, appellant.

(Ind. No. 347/06)

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David Goodman, Poughkeepsie, N.Y. (Steven Levine of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Joan H. McCarthy of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Dolan, J.), rendered January 30, 2007, convicting him of attempted robbery in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the People's contention, the defendant preserved for appellate review his argument that he should have been afforded youthful offender treatment (*see* CPL 470.05[2]; *People v Murray*, 57 AD3d 921, *affd* 15 NY3d 725; *People v Martinez*, 301 AD2d 615, 616; *People v Miles*, 244 AD2d 433). As to the merits of the defendant's argument, since the defendant was convicted of an armed felony offense (*see* CPL 1.20[41][b]; Penal Law § 70.02[1][b], [c]; §§ 110.00, 160.10[2][b]), he could only be adjudicated a youthful offender if there existed "mitigating circumstances that [bore] directly upon the manner in which the crime was committed," or if his participation in the crimes was "relatively minor" (CPL 720.10[3][i], [ii]; *see People v Stokes*, 28 AD3d 592). The sentencing court did not improvidently exercise its discretion in declining to sentence the defendant as a youthful offender, since there were insufficient mitigating circumstances

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to support such an adjudication (*see* CPL 720.20[1][a]; *People v Stokes*, 28 AD3d at 592). Furthermore, the defendant, who placed a BB gun at the victim's head and demanded money, was not a minor participant in this crime (*see People v Jhang*, 302 AD2d 606, 607).

SKELOS, J.P., SANTUCCI, ANGIOLILLO, HALL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court

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