

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

D28772  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 6, 2010

STEVEN W. FISHER, J.P.  
MARK C. DILLON  
RUTH C. BALKIN  
CHERYL E. CHAMBERS  
SANDRA L. SGROI, JJ.

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2009-02602

DECISION & ORDER

The People, etc., respondent,  
v Charles J. Nelson, appellant.

(Ind. No. 125/08)

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Arza Feldman, Uniondale, N.Y. (Steven A. Feldman of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered March 9, 2009, convicting him of attempted burglary in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

On appeal, the defendant objects to the restitution provision of his sentence. However, since he failed to object at the time of sentencing, the defendant's current claims regarding the imposition of restitution are unpreserved for appellate review (*see People v Toomer*, 61 AD3d 899; *People v Passalacqua*, 43 AD3d 964; *People v Allen*, 305 AD2d 421).

The defendant also contends that the County Court should not have imposed a \$50 DNA databank fee because he had previously provided a DNA sample pursuant to a prior felony conviction. However, since that prior felony conviction predated the enactment of the legislation establishing such fee (*see Penal Law § 60.35*, as amended by L 2003, ch 62, part F, § 1), the County

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Court did not err in imposing a DNA database fee for the defendant's current conviction (*see People v Vail*, 20 AD3d 590).

FISHER, J.P., DILLON, BALKIN, CHAMBERS and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court