

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

D33822
H/prt

_____AD3d_____

Submitted - January 18, 2012

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-02323

DECISION & ORDER

The People, etc., respondent,
v Torrell Stone, appellant.

(Ind. No. 07-00381)

Diane E. Selker, Peekskill, N.Y., for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Itamar J. Yeger of counsel;
Selha R. Abed on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Kelly, J.), rendered April 9, 2008, convicting him of criminal possession of a controlled substance in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's challenge to the factual sufficiency of his plea allocution is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Toxey*, 86 NY2d 725, 726). Moreover, the "rare case" exception to the preservation requirement does not apply here because the defendant's allocution did not cast significant doubt on his guilt, negate an essential element of the crime, or call into question the voluntariness of his plea (*People v Lopez*, 71 NY2d 662, 666; *see People v Young*, 88 AD3d 918). In any event, the facts admitted by the defendant during his plea

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allocution were sufficient to support his plea of guilty (*see People v Goldstein*, 12 NY3d 295, 301; *People v Seeber*, 4 NY3d 780, 781; *People v Fooks*, 21 NY2d 338, 350, *cert denied sub nom. Robinson v New York*, 393 US 1067).

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court