

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

D34062
Y/prt

_____AD3d_____

Submitted - January 30, 2012

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2011-01381

DECISION & ORDER

The People, etc., respondent,
v Willie Johnson, appellant.

(Ind. No. 2571/10)

Mark Diamond, New York, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Kahn, J.), rendered January 24, 2011, convicting him of failing to register or verify as a sex offender (two counts), upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention, in effect, that the indictment was jurisdictionally defective because it failed to allege every material element of the crimes charged, is without merit. "[T]he indictment effectively charge[d] . . . defendant with the commission of a particular crime and afforded him fair notice of the charges made against him, so that he [could] prepare a defense and . . . avoid subsequent attempts to retry him for the same crime" (*People v Welch*, 46 AD3d 1228, 1229 [internal quotation marks omitted], quoting *People v Ray*, 71 NY2d 849, 850 [citations omitted]; see *People v Cobb*, 2 Misc 3d 237, 241).

The defendant also contends that his plea allocution under both counts of the indictment was insufficient, requiring the vacatur of his plea. However, having failed to move to withdraw his plea prior to the imposition of the sentence, the defendant has not preserved the issue

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of the sufficiency of his plea allocution for appellate review (*see People v Lopez*, 71 NY2d 662, 665; *People v Aviles*, 150 AD2d 590, 591). “Moreover, the ‘rare case’ exception to the preservation requirement does not apply here because the defendant’s plea 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 Watts*, 91AD3d 678; *see People v Lopez*, 71 NY2d at 666). In any event, the facts admitted by the defendant in his allocution were sufficient to support his plea of guilty (*see People v Seeber*, 4 NY3d 780, 781).

Finally, “[b]y pleading guilty, the defendant waived [his] claim that the evidence submitted to the grand jury was insufficient to support the indictment” (*People v Eun Sil Jang*, 17 AD3d 693, 694; *see People v Hansen*, 95 NY2d 227, 233).

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, 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