

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

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_____AD3d_____

Submitted - May 23, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-02081

DECISION & ORDER

The People, etc., respondent,
v Michael McGinn, appellant.

(Ind. No. 781-07)

Arza Feldman, Uniondale, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marcia R. Kucera of counsel),
for respondent.

Appeal by the defendant from an amended judgment of the Supreme Court, Suffolk County (R. Doyle, J.), rendered January 24, 2011, revoking a sentence of probation previously imposed by the same court, upon a finding that he had violated conditions thereof, upon his admission, and imposing a sentence of imprisonment upon his previous conviction of operating a vehicle while under the influence of alcohol, as a felony, and aggravated unlicensed operation of a motor vehicle in the first degree, upon his plea of guilty.

ORDERED that the amended judgment is affirmed.

The defendant's contention that the Supreme Court improperly sentenced him without obtaining an updated presentence report is unreserved for appellate review (*see* CPL 470.05[2]; *People v Gledhill*, 91 AD3d 886; *People v Mannina*, 89 AD3d 1038; *People v Thompson*, 65 AD3d 1390) and, in any event, is without merit (*see People v Kuey*, 83 NY2d 278, 282-283; *People v Cannon*, 208 AD2d 942, 943; *People v Jackson*, 106 AD2d 93, 98).

The defendant failed to preserve for appellate review his contention that his sentence

should be vacated because the Supreme Court did not afford either the prosecutor or defense counsel the opportunity to make a statement with respect to the sentence and did not ask the defendant if he wished to make a statement in his own behalf, in violation of CPL 380.50(1) (*see* CPL 470.05[2]; *People v McCant*, 79 AD3d 908; *People v Chin*, 69 AD3d 752, 753; *People v Chi Fong Chen*, 56 AD3d 488, 489), and the contention is, in any event, without merit (*see People v McClain*, 35 NY2d 483, 491, *cert denied sub nom. Taylor v New York*, 423 US 852; *People v Regan*, 88 AD2d 664).

RIVERA, J.P., ENG, CHAMBERS, SGROI and MILLER, 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