

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

D36565
O/kmb

_____AD3d_____

Submitted - November 7, 2012

DANIEL D. ANGIOLILLO, J.P.
RUTH C. BALKIN
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2011-09783

DECISION & ORDER

The People, etc., respondent,
v Ronin Scott, appellant.

(Ind. No. 131/10)

Thomas N.N. Angell, 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 (Greller, J.), rendered September 27, 2011, convicting him of assault in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions that his plea of guilty was not knowing, voluntary, and intelligent because the allocution was factually insufficient and that the court failed to specifically enumerate all of the rights to which he was entitled are unpreserved for appellate review (*see* CPL 220.60[3]; 470.05[2]; *People v Toxey*, 86 NY2d 725, 726; *People v Lopez*, 71 NY2d 662, 665; *People v Henson*, 96 AD3d 1076, 1077; *People v Bunn*, 79 AD3d 1143). While there is an exception to the preservation requirement when a defendant's recitation of the facts negates an essential element of the crime, casts significant doubt on his guilt, or otherwise calls into question the voluntariness of the plea (*see People v Lopez*, 71 NY2d at 666), this exception does not apply here because the defendant's plea allocution did not negate an essential element of assault in the third degree, cast significant doubt on his guilt, or call into question the voluntariness of the plea (*see People v Seeber*, 4 NY3d 780, 781; *People v Fiumefreddo*, 82 NY2d 536, 543; *People v Harris*, 61 NY2d 9, 18; *People v Nixon*, 21 NY2d 338, 353, *cert denied sub nom. Robinson v New York*, 393

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US 1067).

ANGIOLILLO, J.P., BALKIN, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court