

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 07-01767

PRESENT: MARTOCHE, J.P., FAHEY, GREEN, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAELJON H. LORD, DEFENDANT-APPELLANT.

CARR SAGLIMBEN LLP, OLEAN (JAY D. CARR OF COUNSEL), FOR
DEFENDANT-APPELLANT.

EDWARD M. SHARKEY, DISTRICT ATTORNEY, LITTLE VALLEY (LORI PETTIT
RIEMAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cattaraugus County Court (Larry M. Himelein, J.), rendered October 10, 2006. The judgment convicted defendant, upon a jury verdict, of rape in the second degree, criminal sexual act in the second degree, endangering the welfare of a child, and unlawfully dealing with a child in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him following a jury trial of, inter alia, rape in the second degree (Penal Law § 130.30 [1]), and endangering the welfare of a child (§ 260.10 [1]), defendant contends that County Court abused its discretion in failing, sua sponte, to order a competency evaluation before trial (see CPL 730.30 [1]; *People v Tortorici*, 92 NY2d 757, 765-766, cert denied 528 US 834; *People v Morgan*, 87 NY2d 878, 879-880). We reject that contention, inasmuch as the record is devoid of any indication that the court had "a 'reasonable ground for believing that [the] defendant [was] in such state of idiocy, imbecility or insanity that he [was] incapable of understanding the charge, indictment or proceedings or of making his defense' " (*Tortorici*, 92 NY2d at 765; see *People v Corney*, 303 AD2d 1006, lv denied 1 NY3d 570). We also reject the contention of defendant that the court deprived him of his right to a fair trial by admitting in evidence references to uncharged crimes. The references to those uncharged crimes were properly admitted in evidence to support the count charging endangering the welfare of a child (see *People v Keindl*, 68 NY2d 410, 421-422, rearg denied 69 NY2d 823; *People v Lemanski*, 217 AD2d 962). Defendant failed to preserve for our review his contention with respect to the alleged inaccuracy of information relied upon by the court in sentencing him (see *People v Leeson*, 299 AD2d 919, 920, lv denied 99 NY2d 560; *People v Washington*, 291 AD2d 780, lv denied 98 NY2d 682), and we decline to

exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). Finally, the sentence is not unduly harsh or severe.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court