

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

1429

KA 07-00547

PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, CARNI, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL A. HARRINGTON, DEFENDANT-APPELLANT.

DAVID M. KAPLAN, PENFIELD, FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (GEOFFREY KAEUPER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Richard A. Keenan, J.), rendered January 18, 2007. The judgment convicted defendant, upon a jury verdict, of course of sexual conduct against a child in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of course of sexual conduct against a child in the first degree (Penal Law § 130.75 [1] [a]). Defendant failed to preserve for our review his challenge to the legal sufficiency of the evidence by failing to renew his motion for a trial order of dismissal after presenting evidence (*see People v Hines*, 97 NY2d 56, 61, rearg denied 97 NY2d 678). Contrary to the implicit contention of defendant, he did not preserve his challenge for our review by his post-trial motion pursuant to CPL 330.30 (*see People v Mills*, 28 AD3d 1156, 1157, lv denied 7 NY3d 903). In any event, defendant's challenge lacks merit (*see generally People v Bleakley*, 69 NY2d 490, 495). Furthermore, viewing the evidence in light of the elements of the crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally Bleakley*, 69 NY2d at 495). "Great deference is accorded to the jury's resolution of credibility issues . . . , and it cannot be said herein that the jury failed to give the evidence the weight it should be accorded" (*People v McKinnon*, 15 AD3d 842, 842, lv denied 4 NY3d 888).

Defendant also failed to preserve for our review his contention that he was denied a fair trial by prosecutorial misconduct (*see People v Cox*, 21 AD3d 1361, 1363-1364, lv denied 6 NY3d 753), 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]*). We

reject the further contention of defendant that he was denied effective assistance of counsel. Viewing the evidence, the law and the circumstances of the case as a whole and as of the time of the representation, we conclude that defendant was afforded meaningful representation (*see generally People v Baldi*, 54 NY2d 137, 147). Finally, the sentence is not unduly harsh or severe.

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court