

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

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KA 05-01323

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMAL D. MASON, DEFENDANT-APPELLANT.

WILLIAM G. PIXLEY, ROCHESTER, FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (PATRICK H. FIERRO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (John J. Connell, J.), rendered April 29, 2005. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree (four counts), criminal possession of a weapon in the third degree (10 counts), reckless endangerment in the first degree and unlawful wearing of a body vest.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of, inter alia, four counts of criminal possession of a weapon in the second degree (Penal Law § 265.03 [former (2)]). In previously affirming the judgments of conviction of four of the codefendants, we rejected their contentions that County Court erred in determining that the police had probable cause to search the van in which defendant and those codefendants were passengers (see *People v Young*, 57 AD3d 1431, lv denied 12 NY3d 789; *People v Majors*, 55 AD3d 1288, lv denied 11 NY3d 898; *People v Hunt*, 52 AD3d 1312, lv denied 11 NY3d 737; *People v Jackson*, 52 AD3d 1318, lv denied 11 NY3d 737). We likewise reject that same contention of defendant raised herein. We also rejected the contention of three of the codefendants that the police had probable cause to stop the van (see *Young*, 57 AD3d 1431; *Majors*, 55 AD3d 1288; *Hunt*, 52 AD3d 1312), and we similarly reject that contention of defendant raised herein. Contrary to defendant's further contention, the sentence is not unduly harsh or severe. We agree with defendant, however, that the certificate of conviction incorrectly reflects that defendant was sentenced as a second felony offender, and it must therefore be amended to reflect that he was sentenced as a violent felony offender

(see *People v Wynn*, 55 AD3d 1378, 1379, *lv denied* 11 NY3d 901).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court