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

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KA 12-02087

PRESENT: CENTRA, J.P., CARNI, SCONIERS, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

SHAWN M. HALLMARK, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

NATHANIEL L. BARONE, PUBLIC DEFENDER, MILLVILLE (LYLE T. HAJDU OF COUNSEL), FOR DEFENDANT-APPELLANT.

DAVID W. FOLEY, DISTRICT ATTORNEY, MAYVILLE (PATRICK E. SWANSON OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Chautauqua County Court (John T. Ward, J.), rendered October 1, 2012. The appeal was held by this Court by order entered November 21, 2014, decision was reserved and the matter was remitted to Chautauqua County Court for further proceedings (122 AD3d 1438).

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

Memorandum: In appeal No. 1, defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a forged instrument in the second degree (Penal Law § 170.25) and, in appeal No. 2, he appeals from a judgment convicting him upon his plea of guilty of attempted criminal sale of a controlled substance in the fifth degree (§§ 110.00, 220.31). We previously determined in each appeal that County Court did not rule on defendant's pro se motion to withdraw his guilty plea (*People v Hallmark*, 122 AD3d 1438, 1439), and we therefore held the case, reserved decision, and remitted the matter to County Court to rule on defendant's motion (*id*.). On remittal, however, defendant withdrew his motion. Thus, the only issue remaining for us to address is the severity of the sentence and, contrary to defendant's contention in each appeal, we conclude that the sentence is not unduly harsh and severe.

Entered: July 2, 2015

Frances E. Cafarell
Clerk of the Court