

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

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KA 14-01170

PRESENT: CENTRA, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALVA C. RINKER, JR., DEFENDANT-APPELLANT.

KARPINSKI, STAPLETON & TEHAN, P.C., AUBURN (ADAM H. VAN BUSKIRK OF COUNSEL), FOR DEFENDANT-APPELLANT.

KEITH A. SLEP, DISTRICT ATTORNEY, BELMONT (J. THOMAS FUOCO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Allegany County Court (Thomas P. Brown, J.), rendered May 7, 2014. The judgment convicted defendant, upon his plea of guilty, of reckless endangerment 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 his plea of guilty, of reckless endangerment in the first degree (Penal Law § 120.25). Defendant's challenge to the factual sufficiency of the plea allocution is unpreserved for our review inasmuch as he did not move to withdraw his plea or to vacate the judgment of conviction (*see People v Williams*, 91 AD3d 1299, 1299; *see generally People v Lopez*, 71 NY2d 662, 665). This case does not fall within the narrow exception to the preservation requirement because "defendant's recitation of the facts underlying the crime pleaded to" did not "clearly cast[] significant doubt upon the defendant's guilt or otherwise call[] into question the voluntariness of the plea" (*Lopez*, 71 NY2d at 666). We decline to exercise our power to review defendant's challenge as a matter of discretion in the interest of justice (*see People v Carlisle*, 120 AD3d 1607, 1607-1608, *lv denied* 24 NY3d 1082; *see generally* CPL 470.15 [3] [c]). Finally, we conclude that the sentence is not unduly harsh or severe.

Entered: July 8, 2016

Frances E. Cafarell
Clerk of the Court