

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

1327

KA 12-00814

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DANIEL J. BOYDEN, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

WILLIAMS, HEINL, MOODY & BUSCHMAN, P.C., AUBURN (MARIO J. GUTIERREZ OF COUNSEL), FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered March 20, 2012. The judgment convicted defendant, upon his plea of guilty, of assault in the second degree (two counts) and obstructing governmental administration in the second degree.

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, inter alia, two counts of assault in the second degree (Penal Law § 120.05 [3]) in connection with an altercation with deputies at the Cayuga County Jail and, in appeal No. 2, he appeals from a judgment convicting him upon his plea of guilty of, inter alia, robbery in the first degree (§ 160.15 [3]) in connection with his robbery of a convenience store. Defendant pleaded guilty to all counts of the two indictments in exchange for a sentence promise of concurrent determinate terms of imprisonment, to be followed by a period of postrelease supervision. By failing to move to withdraw his plea or to vacate the judgment of conviction in each appeal, defendant failed to preserve for our review his contention in each appeal that his plea of guilty was not voluntarily entered (*see People v Toxey*, 86 NY2d 725, 726, *rearg denied* 86 NY2d 839; *People v Theall*, 109 AD3d 1107, 1107). In any event, defendant's contention is belied by the record of the plea proceeding in each appeal (*see People v Weakfall*, 108 AD3d 1115, 1115, *lv denied* 21 NY3d 1078). The bargained-for sentence is not unduly harsh and severe.

Entered: December 27, 2013

Frances E. Cafarell
Clerk of the Court