

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

729

**KA 16-01241**

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, TROUTMAN, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES J. ALLEN, ALSO KNOWN AS CJ,  
DEFENDANT-APPELLANT.

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CHARLES A. MARANGOLA, MORAVIA, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (BRIAN T. LEEDS OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered May 5, 2016. The judgment convicted defendant, upon his plea of guilty, of burglary in the third degree, tampering with physical evidence and conspiracy in the fourth degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of burglary in the third degree (Penal Law § 140.20), tampering with physical evidence (§ 215.40 [2]), and conspiracy in the fourth degree (§ 105.10 [1]), defendant contends that his plea was not knowing, voluntary, and intelligent based on County Court's failure to inform him of certain constitutional due process rights before eliciting his factual admissions. However, "defendant failed to preserve his contention for our review by failing to move to withdraw his guilty plea or to vacate the judgment of conviction on that ground" (*People v Wilson*, 115 AD3d 1229, 1229, *lv denied* 23 NY3d 969; see *People v Williams*, 27 NY3d 212, 221-222). Contrary to defendant's further contention, the sentence is not unduly harsh or severe.

Entered: June 9, 2017

Frances E. Cafarell  
Clerk of the Court