

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

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**KA 08-00881**

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, AND GREEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANDRE M. MCMILLON, DEFENDANT-APPELLANT.

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WYOMING COUNTY-ATTICA LEGAL AID BUREAU, INC., LIVINGSTON COUNTY  
CONFLICT DEFENDERS, WARSAW (NEAL J. MAHONEY OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

THOMAS E. MORAN, DISTRICT ATTORNEY, GENESEO (ERIC R. SCHIENER OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of Livingston County Court (Dennis S. Cohen, J.), rendered March 11, 2008. The judgment convicted defendant, upon his plea of guilty, of aggravated unlicensed operation of a motor vehicle 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 aggravated unlicensed operation of a motor vehicle in the first degree (Vehicle and Traffic Law § 511 [3] [a] [ii]). We reject defendant's contention that County Court erred in imposing an enhanced sentence. The court conditioned the plea agreement on, inter alia, defendant's timely appearance at sentencing, and defendant arrived one hour and 20 minutes after the scheduled time for sentencing. Indeed, the record establishes that the court imposed the condition because defendant previously had arrived late for court appearances and that, on one of those occasions, the court was required to interrupt another proceeding in order to address defendant's case. We thus conclude that the court properly enhanced the sentence based upon defendant's failure to abide by a condition of the plea agreement (see *People v Figgins*, 87 NY2d 840, 841; *People v Marshall*, 231 AD2d 893, 894, lv denied 89 NY2d 866).

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court