

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

223

KA 08-01502

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND LINDLEY, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH MCMASTER, DEFENDANT-APPELLANT.

DENNIS CLAUS, LIVERPOOL, FOR DEFENDANT-APPELLANT.

GERALD L. STOUT, DISTRICT ATTORNEY, WARSAW (VINCENT A. HEMMING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Mark H. Dadd, J.), rendered June 5, 2008. The judgment convicted defendant, upon a jury verdict, of criminal possession of a controlled substance in the third degree, promoting prison contraband in the first degree and criminal possession of a controlled substance in the seventh degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of, inter alia, criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]). Defendant failed to preserve for our review his contention that County Court failed to conduct an adequate inquiry into his allegation that the jury had engaged in premature deliberations (*see* CPL 470.05 [2]; *People v Smith*, 49 AD3d 904, 905, *lv denied* 10 NY3d 870; *People v Paccione*, 295 AD2d 450, 450-451, *lv denied* 98 NY2d 731), and we decline to exercise our power to review defendant's contention as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [a]). The sentence is not unduly harsh or severe.

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court