

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

1683

KA 07-02561

PRESENT: SMITH, J.P., FAHEY, CARNI, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BRANDON WEST, DEFENDANT-APPELLANT.

KRISTIN F. SPLAIN, CONFLICT DEFENDER, ROCHESTER (RICHARD W. YOUNGMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY A. GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (John R. Schwartz, A.J.), rendered November 19, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree and menacing in the second 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 criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) and menacing in the second degree (§ 120.14 [1]). Defendant failed to preserve for our review his contention that County Court erred in agreeing with the People that he should not be adjudicated a youthful offender and, in any event, that contention lacks merit (*see People v Daniels*, 20 AD3d 940, *lv denied* 5 NY3d 805; *People v Mauricio*, 8 AD3d 1089, 1090, *lv denied* 3 NY3d 678). Likewise, the contention of defendant that he was prejudiced by prosecutorial misconduct is unpreserved for our review (*see People v Gordon*, 277 AD2d 1053, *lv denied* 96 NY2d 759), and it lacks merit.

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court