

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

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KA 09-00382

PRESENT: CENTRA, J.P., FAHEY, CARNI, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ERIC S. DAWSON, ALSO KNOWN AS ERIC DAWSON,
DEFENDANT-APPELLANT.

GARY A. HORTON, PUBLIC DEFENDER, BATAVIA (MELISSA L. CIANFRINI OF
COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered January 21, 2009. The judgment convicted defendant, upon his plea of guilty, of attempted rape in the second 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 attempted rape in the second degree (Penal Law §§ 110.00, 130.30 [1]), defendant contends that County Court abused its discretion in denying his request for youthful offender status. We reject that contention (*see People v Ariola* [appeal No. 1], 15 AD3d 882, amended on rearg 17 AD3d 1172, lv dismissed 5 NY3d 758, lv denied 5 NY3d 784). "The determination . . . whether to grant . . . youthful offender status rests within the sound discretion of the court and depends upon all the attending facts and circumstances of the case" (*People v Ortega*, 114 AD2d 912, 912, lv denied 67 NY2d 887; *see People v Smith*, 286 AD2d 878, lv denied 98 NY2d 641). The sentence is not unduly harsh or severe.

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court