

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

732

KA 07-01939

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CIJNTJE J. COX, DEFENDANT-APPELLANT.

DAVISON LAW OFFICE, PLLC, CANANDAIGUA (MARY P. DAVISON OF COUNSEL),
FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered April 18, 2007. The judgment convicted defendant, upon a jury verdict, of assault in the first degree and criminal possession of a weapon in the third 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 assault in the first degree (Penal Law § 120.10 [3]) and criminal possession of a weapon in the third degree (§ 265.02 [former (4)]). Defendant failed to preserve for our review his contention that the count of the indictment charging him with criminal possession of a weapon was duplicitous (*see People v Sponburgh*, 61 AD3d 1415, *lv denied* 12 NY3d 929), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [a]). Viewing the evidence in light of the elements of assault in the first degree as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict with respect to that count is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495).

We reject the further contention of defendant that he was denied effective assistance of counsel (*see generally People v Baldi*, 54 NY2d 137, 147). Although defendant contends that he was denied effective assistance of counsel because defense counsel did not seek youthful offender status for him, it is well established that "[t]he failure to make motions with little or no chance of success does not constitute ineffective assistance of counsel" (*People v Nuffer*, 70 AD3d 1299, 1300). Here, there were no "mitigating circumstances . . . bear[ing] directly upon the manner in which the crime[s] were] committed," nor could defendant be considered a "relatively minor" participant in the

crimes (CPL 720.10 [3]). Finally, the sentence is not unduly harsh or severe.

Entered: July 9, 2010

Patricia L. Morgan
Clerk of the Court