

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

1607

**KA 09-02222**

PRESENT: MARTOCHE, J.P., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEVIN MANUEL, DEFENDANT-APPELLANT.

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RONALD C. VALENTINE, PUBLIC DEFENDER, LYONS (MARY P. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

RICHARD M. HEALY, DISTRICT ATTORNEY, LYONS (DAVID V. SHAW OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Wayne County Court (Stephen R. Sirkin, J.), rendered October 16, 2009. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance 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 his plea of guilty of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]). The contention of defendant that County Court failed to apprehend the extent of its discretion in sentencing him is not supported by the record (*see People v Moon*, 43 AD3d 1379, *lv denied* 9 NY3d 1036; *People v Lee*, 24 AD3d 1246, *lv denied* 6 NY3d 850; *cf. People v Schafer*, 19 AD3d 1133). To the extent that the further contention of defendant that he was denied effective assistance of counsel survives his plea (*see People v Barnes*, 32 AD3d 1250), it "involve[s] matters outside the record on appeal and thus [is] properly raised by way of a motion pursuant to CPL article 440" (*People v Barnes*, 56 AD3d 1171, 1171-1172; *see People v Graham*, 77 AD3d 1439).

Entered: December 30, 2010

Patricia L. Morgan  
Clerk of the Court