

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

439

KA 10-00556

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SUSANNE HAUKE, DEFENDANT-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (BRIAN D. DENNIS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (William F. Kocher, J.), rendered July 15, 2009. The judgment convicted defendant, upon her plea of guilty, of criminal sale of a controlled substance in the fifth degree (two counts).

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

Memorandum: On appeal from a judgment convicting her upon her plea of guilty of two counts of criminal sale of a controlled substance in the fifth degree (Penal Law § 220.31), defendant contends that her monosyllabic responses to County Court's questions cast doubt upon the voluntariness of her plea. She further contends that the court failed to ascertain whether she knowingly and unlawfully sold a controlled substance and that, because she did not recite the elements of the offenses, there was no assurance that she understood the nature of the charges to which she was pleading guilty. Those contentions are actually challenges to the factual sufficiency of the plea allocution, and defendant failed to preserve her contentions for our review by moving to withdraw the plea or to vacate the judgment of conviction (*see People v Lopez*, 71 NY2d 662, 665; *People v Jamison*, 71 AD3d 1435, 1436, *lv denied* 14 NY3d 888; *People v Bailey*, 49 AD3d 1258, *lv denied* 10 NY3d 932). Contrary to defendant's further contention, this case does not fall within the narrow exception to the preservation requirement set forth in *Lopez* (71 NY2d at 666). Finally, the sentence is not unduly harsh or severe.

Entered: April 29, 2011

Patricia L. Morgan
Clerk of the Court