

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

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KA 10-01111

PRESENT: SCUDDER, P.J., FAHEY, CARNI, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

COREY A. BROWN, DEFENDANT-APPELLANT.

MICHAEL F. DONNELLY, SYRACUSE, FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered April 19, 2010. The judgment convicted defendant, upon his plea of guilty, of rape in the third 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 rape in the third degree (Penal Law § 130.25 [2]), defendant contends that County Court improperly considered prior criminal charges that did not result in convictions when it imposed sentence and thus that the sentence is illegal. Defendant's valid waiver of the right to appeal does "not encompass the right to challenge the legality of the sentencing procedure on appeal" (*People v Nicholson*, 237 AD2d 973, 974, *lv denied* 90 NY2d 908), nor is preservation required to challenge the legality of a sentence (see generally *People v Samms*, 95 NY2d 52, 56). Nevertheless, the record does not support defendant's contention.

Entered: April 29, 2011

Patricia L. Morgan
Clerk of the Court