

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

570

KA 10-00698

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LESLIE J. BARRETT, DEFENDANT-APPELLANT.

CHRISTOPHER HAMMOND, COOPERSTOWN, FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Allegany County Court (Thomas P. Brown, J.), rendered February 19, 2010. The judgment convicted defendant, upon his plea of guilty, of burglary 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 burglary in the third degree (Penal Law § 140.20). Defendant's contention that his guilty plea was not voluntary because the presentence report suggested that he may not have been competent at the time of the plea is not preserved for our review, and the narrow exception to the preservation requirement does not apply inasmuch as defendant did not make any statements during the plea allocution "that were inconsistent with his guilt or otherwise called into question the voluntariness of his plea" (*People v Coons*, 73 AD3d 1343, 1344, *lv denied* 15 NY3d 803; *see People v Carpenter*, 13 AD3d 1193, *lv denied* 4 NY3d 797). In any event, that contention is without merit. County Court did not abuse its discretion in failing sua sponte to order a competency exam based on the information presented in the presentence report concerning defendant's mental health and substance abuse issues (*see Coons*, 73 AD3d at 1345; *People v Ortiz*, 62 AD3d 1034; *People v Jermain*, 56 AD3d 1165, *lv denied* 11 NY3d 926). The sentence is not unduly harsh or severe.

Entered: May 6, 2011

Patricia L. Morgan
Clerk of the Court