

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

**614**

**KA 12-01040**

PRESENT: SMITH, J.P., CARNI, LINDLEY, VALENTINO, AND WHALEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEREMY M. JOHNSON, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Joseph G. Nesser, A.J.), rendered March 13, 2012. The judgment convicted defendant, upon his plea of guilty, of rape in the second 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 rape in the second degree (Penal Law § 130.30 [1]). Defendant failed to preserve for our review his contention that his plea of guilty was not knowing, voluntary or intelligent because he did not "move to withdraw the plea on the same grounds [now] alleged on appeal or else file a motion to vacate the judgment of conviction pursuant to CPL 440.10" (*People v Peque*, 22 NY3d 168, 182, *cert denied* \_\_\_ US \_\_\_, 135 S Ct 90; *see People v Robinson*, 64 AD3d 1248, 1248, *lv denied* 13 NY3d 862; *see generally People v Lopez*, 71 NY2d 662, 665). Further, we conclude that this is not one of those "rare case[s]" in which, during the plea allocution, "defendant's recitation of the facts underlying the crime pleaded to clearly casts significant doubt upon . . . defendant's guilt or otherwise calls into question the voluntariness of the plea" (*Lopez*, 71 NY2d at 666).

Entered: May 8, 2015

Frances E. Cafarell  
Clerk of the Court