

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

810

KA 08-01025

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, CARNI, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES S. ROGERS, ALSO KNOWN AS JIMMY JAZZ,
DEFENDANT-APPELLANT.

CHARLES A. MARANGOLA, MORAVIA, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered June 14, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal sale 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 sale of a controlled substance in the third degree (Penal Law § 220.39 [1]). We reject the contention of defendant that County Court did not give due consideration to his pro se motion to withdraw his plea. The determination whether to entertain a pro se motion of a defendant who is represented by counsel is solely within the court's discretion (*see People v Rodriguez*, 95 NY2d 497, 500; *People v Minter*, 295 AD2d 927, lv denied 98 NY2d 712), and we conclude that the court did not abuse its discretion in this case. We further reject defendant's contention that the bargained-for sentence is unduly harsh or severe. Finally, defendant failed to preserve for our review his contention that the sentence imposed constituted cruel and unusual punishment (*see People v Reese*, 31 AD3d 582, lv denied 7 NY3d 851) and, in any event, that contention lacks merit. "There are no exceptional circumstances warranting modification of the sentence, which was the statutory minimum and the result of a negotiated plea" (*id.* at 583).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court