

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

884

KA 07-00142

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, CARNI, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL SHOAF, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NICOLE M. FANTIGROSSI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered January 3, 2006. The judgment convicted defendant, upon his plea of guilty, of burglary in the second 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 burglary in the second degree (Penal Law § 140.25 [1] [a]), defendant contends that he should have been afforded youthful offender status. Defendant failed to preserve that contention for our review inasmuch as he did not request a determination concerning youthful offender treatment at the time of the plea or at sentencing (*see People v Hoag*, 23 AD3d 1031, *lv denied* 6 NY3d 814). In any event, the record establishes that defendant "made a voluntary choice to accept a plea bargain containing a provision specifically precluding" youthful offender treatment (*People v Sharlow*, 12 AD3d 724, 726, *lv denied* 4 NY3d 748). The sentence is not unduly harsh or severe.

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court