

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

958

KA 09-00364

PRESENT: SMITH, J.P., FAHEY, CARNI, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSEPH V. FICCHI, DEFENDANT-APPELLANT.

BIANCO LAW OFFICE, SYRACUSE (RANDI BIANCO OF COUNSEL), FOR
DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered September 5, 2007. The judgment convicted defendant, upon his plea of guilty, of sexual abuse in the first 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 sexual abuse in the first degree (Penal Law § 130.65 [2]). Defendant failed to preserve for our review his contention that County Court abused its discretion in failing to afford him youthful offender status, inasmuch as he did not request youthful offender status at the time of the plea proceeding or at sentencing (*see People v Capps*, ___ AD3d ___ [June 5, 2009]; *People v Fowler*, 28 AD3d 1183, *lv denied* 7 NY3d 788). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see Fowler*, 28 AD3d at 1184). Contrary to defendant's contention, "[t]he statute requiring the court to make the [youthful offender] determination is not like those which by their terms, indicate it is the court's responsibility to alert the defendant or his lawyer to his rights or the detriment he may suffer" (*People v McGowen*, 42 NY2d 905, 906, *rearg denied* 42 NY2d 1015; *see People v Cunningham*, 238 AD2d 350, *lv denied* 90 NY2d 857).

Entered: July 2, 2009

Patricia L. Morgan
Clerk of the Court