

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

1343

KA 07-00536

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, CARNI, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHRISTOPHER PARKER, DEFENDANT-APPELLANT.

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

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LORETTA S. COURTNEY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (John R. Schwartz, A.J.), rendered July 24, 2006. The judgment convicted defendant, upon his plea of guilty, of attempted burglary 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 attempted burglary in the first degree (Penal Law §§ 110.00, 140.30 [4]). Although defendant is correct that County Court at sentencing failed to address his request to be adjudicated a youthful offender (*see generally* CPL 720.20 [1]), we conclude that any error in the court's failure to do so is harmless because the record establishes that defendant was not in fact eligible for youthful offender treatment (*see generally* *People v Orcutt*, 51 AD3d 1404, 1405). Defendant was convicted of an armed felony (*see* CPL 720.10 [2] [a] [ii]), and the exceptions set forth in CPL 720.10 (3) do not apply (*see Orcutt*, 51 AD3d at 1405; *cf. People v Tyquan S.*, 54 AD3d 1062). Specifically, " 'defendant offered the sentencing court no evidence of mitigating circumstances relating to the manner in which the subject [crime was] committed, and his role in the [crime] was not minor. Accordingly, he could not be adjudicated a youthful offender' " (*People v Crawford*, 55 AD3d 1335, 1336, *lv denied* 11 NY3d 896).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court