

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

1627

**KA 08-02187**

PRESENT: HURLBUTT, J.P., FAHEY, PERADOTTO, GREEN, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL E. HANNIG, DEFENDANT-APPELLANT.

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

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

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Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered August 4, 2008. The judgment convicted defendant, upon his plea of guilty, of criminal mischief 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 mischief in the third degree (Penal Law § 145.05 [2]). We note at the outset that defendant's release to parole supervision does not render moot defendant's contention that the sentence is unduly harsh or severe because defendant " 'remains under the control of the Parole Board until his sentence has terminated' " (*People v Rowell*, 5 AD3d 1073, 1074, *lv denied* 2 NY3d 806; *see also People v Brown*, 39 AD3d 1021). We nevertheless reject defendant's contention with respect to the severity of the sentence. Defendant failed to preserve for our review his challenge to the amount of restitution imposed by failing to request a hearing or to object to the amount of restitution (*see People v Horne*, 97 NY2d 404, 414 n 3; *People v Lovett*, 8 AD3d 1007, *lv denied* 3 NY3d 673, 677), and we decline to exercise our power to review that challenge as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*).

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court