

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

579

KA 08-01906

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DERRICK R. FULTON, DEFENDANT-APPELLANT.

FRANK J. NEBUSH, JR., PUBLIC DEFENDER, UTICA (MARK C. CURLEY OF COUNSEL), FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (MATTHEW P. WORTH OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Barry M. Donalty, J.), rendered August 8, 2008. The judgment convicted defendant, upon a jury verdict, of burglary in the first degree (two counts), robbery in the first degree and robbery in the second degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of two counts each of burglary in the first degree (Penal Law § 140.30 [2], [4]) and robbery in the second degree (§ 160.10 [1], [2] [a]) and one count of robbery in the first degree (§ 160.15 [4]). By failing to object to County Court's ultimate *Sandoval* ruling, defendant failed to preserve for our review his contention that the ruling constitutes an abuse of discretion (see *People v Caswell*, 49 AD3d 1257, lv denied 11 NY3d 735, 740). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). Contrary to defendant's further contention, the court properly ordered the sentence imposed for robbery in the first degree to run consecutively to the sentences imposed on the two counts of burglary in the first degree (see *People v Yong Yun Lee*, 92 NY2d 987, 989; *People v Sanchez*, 31 AD3d 1218, lv denied 7 NY3d 869, 870). The sentence is not unduly harsh or severe.

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court