

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

1239

KA 10-01961

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SHAWN UBRICH, DEFENDANT-APPELLANT.

TIMOTHY J. BRENNAN, AUBURN, FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Cayuga County Court (Mark H. Fandrich, A.J.), rendered August 10, 2010. The judgment convicted defendant, upon his plea of guilty, of gang assault 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, following his plea of guilty, of gang assault in the second degree (Penal Law § 120.06), defendant contends that County Court erred in failing to afford him youthful offender status. As part of the plea agreement, however, defendant waived his right to appeal, and that valid waiver encompasses defendant's present contention (*see People v Capps*, 63 AD3d 1632, *lv denied* 13 NY3d 765). In any event, defendant never requested youthful offender status at the time of the plea or at sentencing and thus his contention is not preserved for our review (*see People v Ficchi*, 64 AD3d 1195, *lv denied* 13 NY3d 859).

Entered: November 10, 2011

Patricia L. Morgan
Clerk of the Court