

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

830

**KA 09-02641**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PATRICK GUILLORY, ALSO KNOWN AS TIMOTHY  
HUNTER, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (KRISTEN MCDERMOTT OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL  
OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Onondaga County  
(John J. Brunetti, A.J.), rendered February 27, 2009. The judgment  
convicted defendant, upon his plea of guilty, of burglary in the third  
degree.

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

Memorandum: On appeal from a judgment convicting him, upon his  
guilty plea, of burglary in the third degree (Penal Law § 140.20),  
defendant contends that his sentence must be vacated because he was  
sentenced as a second felony offender and the People did not file a  
predicate felony offender statement, as required by CPL 400.21.  
Defendant failed to preserve that contention for our review (*see*  
*People v Pellegrino*, 60 NY2d 636, 637; *People v Butler*, 96 AD3d 1367,  
1368; *People v Mateo*, 53 AD3d 1111, 1112, *lv denied* 11 NY3d 791). In  
any event, by admitting in open court that he had been convicted of a  
prior felony offense in New York within the past 10 years, defendant  
waived strict compliance with CPL 400.21 (*see People v Perez*, 85 AD3d  
1538, 1541; *People v Vega*, 49 AD3d 1185, 1186, *lv denied* 10 NY3d 965).

Entered: August 17, 2012

Frances E. Cafarell  
Clerk of the Court