

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

1215

KA 11-02038

PRESENT: CENTRA, J.P., PERADOTTO, SCONIERS, VALENTINO, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TIMOTHY SISLER, DEFENDANT-APPELLANT.

EDWARD P. PERLMAN, CONFLICT DEFENDER, LOCKPORT, FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (LAURA T. BITTNER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Sara S. Sperrazza, J.), rendered July 24, 2009. The judgment convicted defendant, upon his plea of guilty, of sexual abuse in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice by reducing the sentence to a determinate term of imprisonment of four years and a period of postrelease supervision of three years and as modified the judgment is affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of sexual abuse in the first degree (Penal Law § 130.65 [3]), defendant contends that County Court erred in imposing an enhanced sentence without affording him an opportunity to withdraw his plea. That contention is not preserved for our review because defendant did not object to the enhanced sentence, nor did he move to withdraw the plea or to vacate the judgment of conviction (*see People v Sprague*, 82 AD3d 1649, 1649, *lv denied* 17 NY3d 801; *People v Vaillant*, 77 AD3d 1389, 1390), and 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]). We agree with defendant, however, that the sentence of a determinate term of incarceration of seven years followed by a period of three years of postrelease supervision is unduly harsh and severe under the circumstances of this case. As a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [b]), we therefore modify the judgment by reducing the sentence to a determinate term of imprisonment of four years and a period of three years of postrelease supervision.

Entered: November 16, 2012

Frances E. Cafarell
Clerk of the Court