

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

632

KA 13-00310

PRESENT: SCUDDER, P.J., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LEONARD LEE BURDEN, ALSO KNOWN AS LB,
DEFENDANT-APPELLANT.

JAMES S. KERNAN, PUBLIC DEFENDER, LYONS (RICHARD W. YOUNGMAN OF
COUNSEL), FOR DEFENDANT-APPELLANT.

RICHARD M. HEALY, DISTRICT ATTORNEY, LYONS (BRUCE A. ROSEKRANS OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wayne County Court (Dennis M. Kehoe, J.), rendered January 31, 2013. The judgment convicted defendant, upon his plea of guilty, of attempted criminal sale of a controlled substance 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 plea of guilty, of attempted criminal sale of a controlled substance in the third degree (Penal Law §§ 110.00, 220.39 [1]), defendant contends that County Court erred in enhancing his sentence without affording him the opportunity to withdraw his plea (*see generally People v Selikoff*, 35 NY2d 227, 241-242, *cert denied* 419 US 1122). "Defendant, however, failed to preserve that contention for our review because he failed to object to the alleged enhanced sentence and did not move to withdraw his plea or to vacate the judgment of conviction on that ground" (*People v Epps*, 109 AD3d 1104, 1105; *see People v Gerald*, 103 AD3d 1249, 1250). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see CPL 470.15 [3] [c]*), and we conclude that the sentence, as imposed, is not unduly harsh or severe.

Entered: June 13, 2014

Frances E. Cafarell
Clerk of the Court