

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

635

KA 12-00588

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHNNIE E. SMALL, DEFENDANT-APPELLANT.

KEVIN J. BAUER, ALBANY, FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (ASHLEY R. SMALL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (James A.W. McLeod, A.J.), rendered September 6, 2011. The judgment convicted defendant, upon a jury verdict, of grand larceny in the fourth degree.

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

Memorandum: Defendant appeals from a judgment convicting him after a jury trial of grand larceny in the fourth degree (Penal Law § 155.30 [1]). Defendant raises contentions identical to those raised by his codefendant on his appeal (*People v Robinson*, 111 AD3d 1358, *lv denied* 22 NY3d 1141), and "defendant has failed to offer any persuasive reason for this [C]ourt to depart from its prior determination[s] of [those] issue[s]" (*People v Thomas*, 177 AD2d 728, 728, *lv denied* 79 NY2d 1055). We therefore affirm the judgment for the reasons stated in our decision in *Robinson*, and add only that defendant's sentence is not unduly harsh or severe.

Entered: June 13, 2014

Frances E. Cafarell
Clerk of the Court