

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

1333

KA 12-01723

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DERICK W. BARKER, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

BRIDGET L. FIELD, ROCHESTER, FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered April 2, 2012. The judgment convicted defendant, upon his plea of guilty, of strangulation in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of strangulation in the second degree (Penal Law § 121.12). Defendant's contention that County Court erred in refusing to make the presentence report (PSR) available to him before sentencing is without merit inasmuch as defendant did not request the PSR before sentencing (*see generally* CPL 390.50 [2] [a]). Defendant's contention that the court erred in refusing to make the PSR available to him in connection with this appeal is likewise without merit. Indeed, the submissions before us reflect that defendant received and reviewed the PSR in a timely fashion in connection with this appeal. Finally, the sentence is not unduly harsh or severe.

Entered: January 3, 2014

Frances E. Cafarell
Clerk of the Court