

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

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KA 20-00950

PRESENT: WHALEN, P.J., CENTRA, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BRANDON M. PECKHAM, DEFENDANT-APPELLANT.

CHARLES A. MARANGOLA, MORAVIA, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (ERICH D. GROME OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Mark H. Fandrich, A.J.), rendered December 11, 2019. The judgment convicted defendant upon a plea of guilty of criminal possession of a controlled substance in the fourth degree and unauthorized use of a motor vehicle in the third degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a plea of guilty of, inter alia, criminal possession of a controlled substance in the fourth degree (Penal Law § 220.09 [1]). Defendant failed to preserve for our review his contention that County Court erred in imposing an enhanced sentence without holding a hearing pursuant to *People v Outley* (80 NY2d 702 [1993]) inasmuch as he failed to request such a hearing and failed to move to withdraw his plea on that ground (*see People v Scott*, 101 AD3d 1773, 1773 [4th Dept 2012], *lv denied* 21 NY3d 1019 [2013]; *People v Anderson*, 99 AD3d 1239, 1239 [4th Dept 2012], *lv denied* 20 NY3d 1059 [2013]), 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 [3] [c]). We reject defendant's further contention that he was denied effective assistance of counsel (*see generally People v Caban*, 5 NY3d 143, 152 [2005]). The sentence is not unduly harsh or severe.

Entered: June 11, 2021

Mark W. Bennett
Clerk of the Court