

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

852

**KA 23-01255**

PRESENT: SMITH, J.P., CURRAN, MONTOUR, GREENWOOD, AND KEANE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HERBERT D. WOOD, JR., DEFENDANT-APPELLANT.

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BANASIAK LAW OFFICE, PLLC, SYRACUSE (PIOTR BANASIAK OF COUNSEL), FOR DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JOHN C. TUNNEY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Steuben County Court (Patrick F. McAllister, A.J.), rendered July 17, 2023. The judgment convicted defendant upon his plea of guilty of attempted assault in the first 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 attempted assault in the first degree (Penal Law §§ 110.00, 120.10 [1]). Contrary to defendant's contention, his bargained-for sentence is not unduly harsh or severe.

We note, however, that County Court misstated at sentencing that defendant was a second felony offender, rather than a second violent felony offender (see Penal Law §§ 70.02 [1]; 70.04 [1]; see generally *People v Seymore*, 188 AD3d 1767, 1770 [4th Dept 2020], lv denied 36 NY3d 1100 [2021]). Consequently, the certificate of conviction and uniform sentence and commitment form must be amended to reflect that defendant was sentenced as a second violent felony offender (see *People v King*, 225 AD3d 1216, 1216 [4th Dept 2024], lv denied 42 NY3d 928 [2024]; *Seymore*, 188 AD3d at 1770).

Entered: January 31, 2025

Ann Dillon Flynn  
Clerk of the Court