

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

589

**KA 19-01173**

PRESENT: CURRAN, J.P., MONTOUR, OGDEN, DELCONTE, AND KEANE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FREDRICK T. WELCH, DEFENDANT-APPELLANT.

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CARA A. WALDMAN, FAIRPORT, FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (KAYLAN C. PORTER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Ontario County Court (Kristina Karle, J.), rendered January 16, 2019. The judgment convicted defendant upon his plea of guilty of burglary in the third degree (two counts).

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 two counts of burglary in the third degree (Penal Law § 140.20). As defendant correctly concedes, by failing to object to the sentence on the ground that restitution was not part of the plea agreement or to move to withdraw the plea, he failed to preserve his contention that County Court improperly imposed restitution that was not discussed at the time that he pleaded guilty (*see People v Motell*, 229 AD3d 1330, 1331 [4th Dept 2024], *lv denied* 43 NY3d 931 [2025]; *People v Predmore*, 68 AD3d 1755, 1756 [4th Dept 2009], *lv denied* 14 NY3d 804 [2010]). We decline to exercise our power to review the contention as a matter of discretion in the interest of justice (*see CPL 470.15 [3] [c]*).

Entered: July 25, 2025

Ann Dillon Flynn  
Clerk of the Court