

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

847

KA 22-01183

PRESENT: BANNISTER, J.P., MONTOUR, SMITH, GREENWOOD, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ZYON MCCOY, DEFENDANT-APPELLANT.

CAMBARERI & BRENNECK, SYRACUSE (MELISSA K. SWARTZ OF COUNSEL), FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered June 8, 2022. The judgment convicted defendant upon his plea of guilty of criminal possession of a weapon in the second degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of criminal possession of a weapon in the second degree (Penal Law § 265.03 [1] [b]), defendant contends that his plea was not knowingly, voluntarily, and intelligently entered because the defense counsel who represented him at the plea proceeding misinformed him that he would retain the right to raise on appeal certain contentions that were, in fact, forfeited by pleading guilty (*see generally People v Lafferty*, 227 AD3d 1480, 1481-1482 [4th Dept 2024], *lv denied* 42 NY3d 928 [2024], *reconsideration denied* 42 NY3d 1036 [2024]). Although, as defendant correctly concedes, he failed to preserve that contention for our review (*see generally People v Motell*, 229 AD3d 1330, 1331 [4th Dept 2024], *lv denied* 43 NY3d 931 [2025]), we nevertheless exercise our power to review it as a matter of discretion in the interest of justice (*see CPL 470.15 [3] [c]; People v Mothersell*, 204 AD3d 1403, 1405 [4th Dept 2022]). However, we conclude that defendant's contention involves matters outside the record on appeal and must be raised in a motion pursuant to CPL 440.10 (*see People v Richards*, 239 AD3d 1330, 1331 [4th Dept 2025]; *People v Barber*, 192 AD3d 1679, 1680 [4th Dept 2021], *lv denied* 37 NY3d 953 [2021]). Specifically, although the record contains certain statements by defense counsel reflecting that counsel provided advice to defendant regarding challenges that would survive defendant's guilty plea, the record is not clear as to what specific advice was provided to defendant prior to his entering his guilty plea and whether such advice was inaccurate.

Contrary to defendant's further contention, we conclude that the sentence is not unduly harsh or severe.

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court