

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

**323**

**KA 20-00139**

PRESENT: CENTRA, J.P., PERADOTTO, CURRAN, WINSLOW, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH C. SHELTON, SR., DEFENDANT-APPELLANT.

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DAVID P. ELKOVITCH, AUBURN, FOR DEFENDANT-APPELLANT.

KENNETH C. SHELTON, SR., DEFENDANT-APPELLANT PRO SE.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Cayuga County Court (Mark H. Fandrich, A.J.), rendered October 9, 2019. The judgment convicted defendant, upon a plea of guilty, of criminal possession of a controlled substance in the third degree and criminal sale of a controlled substance 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 his guilty plea, of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]) and criminal sale of a controlled substance in the third degree (§ 220.39 [1]). Defendant contends in his main and pro se supplemental briefs that County Court erred in imposing an enhanced sentence based upon his failure to appear at sentencing because the court did not sufficiently warn him about the consequences of his failure to appear. Defendant, however, failed to preserve his contention for our review inasmuch as he did not object to the enhanced sentence or move to withdraw his guilty plea or to vacate the judgment of conviction (*see People v Couturier*, 177 AD3d 1320, 1320-1321 [4th Dept 2019], *lv denied* 34 NY3d 1127 [2020]; *People v Hernandez*, 161 AD3d 1548, 1549 [4th Dept 2018]), and contrary to defendant's further contention in his main brief, the court's alleged failure does not constitute a mode of proceedings error for which preservation is not required. 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]).

Contrary to defendant's contention in his main brief, the enhanced sentence is not unduly harsh or severe. We have reviewed the remaining contentions of defendant raised in his pro se supplemental

brief and conclude that they are without merit.

Entered: March 19, 2021

Mark W. Bennett  
Clerk of the Court