

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

1157

**KA 12-01269**

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, LINDLEY, AND VALENTINO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID F.D., DEFENDANT-APPELLANT.

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CHARLES J. GREENBERG, AMHERST, FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF COUNSEL), FOR RESPONDENT.

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Appeal from an adjudication of the Genesee County Court (Robert C. Noonan, J.), rendered June 5, 2012. The adjudication, entered upon his plea of guilty of a violation of probation, sentenced defendant to a term of intermittent incarceration and continued his term of probation.

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

Memorandum: Defendant appeals from an adjudication, entered upon his plea of guilty of a violation of probation, sentencing him to a term of intermittent incarceration and continuing his term of probation. Defendant's contention that his plea was not knowingly, intelligently, or voluntarily entered is not preserved for our review because he failed to move to withdraw the plea or to vacate the adjudication on that ground (*see People v Atkinson*, 105 AD3d 1349, 1350; *People v Williams*, 91 AD3d 1299, 1299; *see also People v Lopez*, 71 NY2d 662, 665). This case does not fall within the rare exception to the preservation requirement because the plea colloquy did not "clearly cast[] significant doubt upon the defendant's guilt or otherwise call[] into question the voluntariness of the plea" (*Lopez*, 71 NY2d at 666). In any event, we conclude that defendant's contention lacks merit.

Entered: November 8, 2013

Frances E. Cafarell  
Clerk of the Court