

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

683

**KA 13-01425**

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, TROUTMAN, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JENNIFER A. ROBINSON, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER, JEFFREY WICKS, PLLC (JEFFREY WICKS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered April 26, 2013. The judgment convicted defendant, upon a jury verdict, of driving while intoxicated, a class E felony.

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

Memorandum: On appeal from a judgment convicting her following a jury trial of driving while intoxicated as a class E felony (Vehicle and Traffic Law §§ 1192 [3]; 1193 [1] [c] [i] [A]), defendant contends that she was denied effective assistance of counsel based upon defense counsel's failure to secure her testimony before the grand jury or to make an adequate motion to dismiss the indictment based on the alleged violation of CPL 190.50. We reject that contention. Defendant has not shown that she was prejudiced by her attorney's failure to effectuate her appearance before the grand jury or that the outcome of the grand jury proceeding would have been different if she had testified (*see People v Simmons*, 10 NY3d 946, 949; *People v James*, 92 AD3d 1207, 1208, *lv denied* 19 NY3d 962), nor has she shown that an adequate motion based on the violation of CPL 190.50 had any chance of success (*see generally People v Caban*, 5 NY3d 143, 152). Furthermore, defendant's sentence is not unduly harsh or severe.

Entered: June 9, 2017

Frances E. Cafarell  
Clerk of the Court