

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

1158

KA 16-00230

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAREN FLOYD, DEFENDANT-APPELLANT.

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

GREGORY J. MCCAFFREY, DISTRICT ATTORNEY, GENESEO (JOSHUA J. TONRA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Livingston County Court (Robert B. Wiggins, J.), rendered January 5, 2016. The judgment convicted defendant, upon his plea of guilty, of aggravated unlicensed operation of a motor vehicle in the first degree.

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 aggravated unlicensed operation of a motor vehicle in the first degree (Vehicle and Traffic Law § 511 [3] [a] [ii]). Defendant's challenge to the factual sufficiency of the plea allocution is not preserved for our review (*see People v Newton*, 143 AD3d 1286, 1286 [4th Dept 2016], *lv denied* 28 NY3d 1126 [2016]). Even assuming, arguendo, that this case falls within the rare exception to the preservation requirement, thus triggering County Court's duty to inquire further to ensure that the plea was knowingly and voluntarily entered (*see generally People v Lopez*, 71 NY2d 662, 666 [1988]), we conclude that the court's subsequent inquiry and offer to allow defendant to reject the plea and proceed to trial were sufficient to ensure that the plea was knowing and voluntary (*see People v Carter*, 147 AD3d 1514, 1516 [4th Dept 2017], *lv denied* 29 NY3d 1030 [2017]). We note, however, that the certificate of conviction incorrectly identifies the section of the Vehicle and Traffic Law of which defendant was convicted, and must therefore be corrected accordingly (*see People v Maloney*, 140 AD3d 1782, 1783 [4th Dept 2016]).

Entered: November 9, 2017

Mark W. Bennett
Clerk of the Court