

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

644

KA 19-02111

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ASHTON BELLAMY, ALSO KNOWN AS AMIR,
DEFENDANT-APPELLANT.

RYAN JAMES MULDOON, AUBURN, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (ERICH D. GROME OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered May 30, 2019. The judgment convicted defendant upon his plea of guilty of assault 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 assault in the second degree (Penal Law § 120.05 [7]), defendant contends that his plea was not knowingly, intelligently or voluntarily entered. Defendant's contention is not preserved for review inasmuch as he failed to move to withdraw the plea or to vacate the judgment of conviction (*see People v Jones*, 175 AD3d 1845, 1845-1846 [4th Dept 2019], *lv denied* 34 NY3d 1078 [2019]; *People v Mobayed*, 158 AD3d 1221, 1222 [4th Dept 2018], *lv denied* 31 NY3d 1015 [2018]). This case does not fall within the rare exception to the preservation requirement set forth in *People v Lopez* (71 NY2d 662, 666 [1988]). We decline to exercise our power to review defendant's contention as a matter of discretion in the interest of justice (*see CPL 470.15 [3] [c]*).

Entered: July 9, 2021

Mark W. Bennett
Clerk of the Court