

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

471

KA 20-01678

PRESENT: SMITH, J.P., CENTRA, NEMOYER, CURRAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL A. TISDALE, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

KELIANN M. ARGY, ORCHARD PARK, FOR DEFENDANT-APPELLANT.

DONALD G. O'GEEN, DISTRICT ATTORNEY, WARSAW (ADAM W. KOCH OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered October 29, 2020. The judgment convicted defendant upon his plea of guilty of driving while ability impaired by drugs.

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 driving while ability impaired by drugs (Vehicle and Traffic Law § 1192 [4]), defendant contends that his guilty plea was not knowingly, voluntarily, and intelligently entered. Initially, as defendant asserts and the People correctly concede, that contention survives defendant's waiver of the right to appeal (*see People v Stafford*, 195 AD3d 1466, 1466 [4th Dept 2021], *lv denied* 37 NY3d 1029 [2021]). However, it is unpreserved for our review inasmuch as defendant did not move to withdraw his guilty plea or vacate the judgment of conviction (*see generally People v Bush*, 38 NY3d 66, 70 [2022]; *People v Sheppard*, 149 AD3d 1569, 1569 [4th Dept 2017], *lv denied* 29 NY3d 1133 [2017]; *People v Jones*, 118 AD3d 1354, 1354 [4th Dept 2014], *lv denied* 24 NY3d 961 [2014]). 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 8, 2022

Ann Dillon Flynn
Clerk of the Court