

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

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KA 08-00018

PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, CENTRA, AND PERADOTTO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THOMAS J. BELILE, DEFENDANT-APPELLANT.

RONALD C. VALENTINE, PUBLIC DEFENDER, LYONS (DAVID M. PARKS OF COUNSEL), FOR DEFENDANT-APPELLANT.

RICHARD M. HEALY, DISTRICT ATTORNEY, LYONS (JACQUELINE MCCORMICK OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wayne County Court (John B. Nesbitt, J.), rendered October 18, 2005. The judgment convicted defendant, upon his plea of guilty, of aggravated unlicensed operation of a motor vehicle in the first degree, driving while intoxicated, a class E felony, and attempted forgery in the second 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, inter alia, attempted forgery in the second degree (Penal Law §§ 110.00, 170.10 [3]). Defendant failed to preserve for our review his contention that County Court erred in enhancing the sentence without affording him the opportunity to withdraw his plea (*see People v VanDeViver*, 56 AD3d 1118), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]; cf. People v Waggoner*, 53 AD3d 1143, 1144; *People v Fomby*, 42 AD3d 894, 895). The sentence is not unduly harsh or severe.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court