

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

1361

KA 05-01750

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIE JAMES, JR., DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (TIMOTHY S. DAVIS OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (PATRICK H. FIERRO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered June 14, 2005. The judgment convicted defendant, upon his plea of guilty, of robbery 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 robbery in the first degree (Penal Law § 160.15 [3]). Defendant failed to preserve for our review his contention that the plea was not voluntarily entered (see *People v Jennings*, 8 AD3d 1067, 1068, *lv denied* 3 NY3d 676). "Although defendant's initial factual allocution may have negated an essential element of the crime, this case does not fall within the exception to the preservation rule because [Supreme Court] conducted the requisite further inquiry and defendant did not thereafter raise any further objections or move to withdraw his plea or to vacate the judgment of conviction" (*id.*; see *People v Lopez*, 71 NY2d 662, 666; *People v Petersen*, 60 AD3d 1365). The bargained-for sentence is not unduly harsh or severe.

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court