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

1447

KA 07-02356

PRESENT: SMITH, J.P., PERADOTTO, GREEN, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

WILLIE J. SINGLETON, DEFENDANT-APPELLANT.

JOHN E. TYO, SHORTSVILLE, FOR DEFENDANT-APPELLANT.

WILLIE J. SINGLETON, DEFENDANT-APPELLANT PRO SE.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (CATHERINE A. WALSH OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, J.), rendered October 17, 2007. The judgment convicted defendant, upon a jury verdict, of assault 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 a jury verdict of assault in the second degree (Penal Law § 120.05 [7]). We agree with defendant that County Court erred in limiting his cross-examination of the victim with respect to the victim's prior arrest for rape and conviction of sexual abuse (*see People v Grant*, 222 AD2d 1057, *lv denied* 87 NY2d 1020; *People v Batista*, 113 AD2d 890, 891, *lv denied* 67 NY2d 648). We conclude, however, "that there is no reasonable possibility that the error might have contributed to defendant's conviction and that it [is] thus harmless beyond a reasonable doubt" (*People v Crimmins*, 36 NY2d 230, 237; *see also Grant*, 222 AD2d 1057; *Batista*, 113 AD2d at 892). Defendant failed to preserve for our review his further contention that the court penalized him for asserting his right to trial by imposing a greater sentence than that offered during plea negotiations (*see People v Thomas*, 60 AD3d 1341, 1342-1343, *lv denied* 12 NY3d 921). In any event, that contention is without merit, and the sentence is not unduly harsh or severe (*see People v Jacobson*, 60 AD3d 1326, 1329, *lv denied* 12 NY3d 916). We reject the contention of defendant in his pro se supplemental brief that the evidence of physical injury is legally insufficient to support the conviction (*see People v Gerecke*, 34 AD3d 1260, 1261, *lv denied* 7 NY3d 925, 927; *People v Stapleton*, 33 AD3d 464, *lv denied* 7 NY3d 904). The further contention of defendant in his pro se supplemental brief that the court failed to comply with the requirements of CPL 200.60 is not preserved for our review (*see*

People v Santiago, 244 AD2d 263, *lv denied* 91 NY2d 879; *People v Reid*, 232 AD2d 173, *lv denied* 90 NY2d 862), 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]).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court