

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

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KA 08-01502

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND LINDLEY, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH MCMASTER, DEFENDANT-APPELLANT.

DENNIS CLAUS, LIVERPOOL, FOR DEFENDANT-APPELLANT.

GERALD L. STOUT, DISTRICT ATTORNEY, WARSAW (VINCENT A. HEMMING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Mark H. Dadd, J.), rendered June 5, 2008. The judgment convicted defendant, upon a jury verdict, of criminal possession of a controlled substance in the third degree, promoting prison contraband in the first degree and criminal possession of a controlled substance in the seventh 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, inter alia, criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]). Defendant failed to preserve for our review his contention that County Court failed to conduct an adequate inquiry into his allegation that the jury had engaged in premature deliberations (see CPL 470.05 [2]; *People v Smith*, 49 AD3d 904, 905, lv denied 10 NY3d 870; *People v Paccione*, 295 AD2d 450, 450-451, lv denied 98 NY2d 731), and 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 [6] [a]). The sentence is not unduly harsh or severe.

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court