

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

836

KA 07-01177

PRESENT: MARTOCHE, J.P., FAHEY, CARNI, SCONIERS, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JUAN RODRIGUEZ, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PHILIP ROTHSCHILD OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRENTON P. DADEY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Jeffery R. Merrill, A.J.), rendered June 15, 2004. The judgment revoked defendant's sentence of probation and imposed a sentence of imprisonment.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment that revoked the sentence of probation imposed upon his conviction of criminal possession of a controlled substance in the fourth degree (Penal Law § 220.09 [1]) and sentenced him to an indeterminate term of imprisonment. By failing to move to withdraw his admission to the violation of probation or to vacate the judgment revoking the sentence of probation on that ground, defendant failed to preserve for our review his contention that the admission was not voluntary (*see People v Obbagy*, 56 AD3d 1223, *lv denied* 11 NY3d 928; *People v Fontanez*, 19 AD3d 1070, *lv denied* 5 NY3d 788; *see generally People v Lopez*, 71 NY2d 662, 665). This case does not fall within the narrow exception to the preservation doctrine set forth in *Lopez* (71 NY2d at 666). The sentence is not unduly harsh or severe.

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court