

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

1199

KA 07-01033

PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES REED, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

JON STERN, ROCHESTER, FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (JOSEPH D. WALDORF OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered January 30, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the third degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of criminal possession of a weapon in the third degree (Penal Law § 265.02 [former (4)]), defendant contends that Supreme Court erred in enhancing his sentence based on his arrest between the time of his plea and the time of sentencing. Defendant, however, did not object to the enhanced sentence and did not move to withdraw his plea or to vacate the judgment of conviction, and he therefore failed to preserve his contention for our review (see *People v Cox*, 27 AD3d 1170, lv denied 6 NY3d 893; *People v Holmes*, 306 AD2d 889, lv denied 100 NY2d 621). 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]). The sentence is not unduly harsh or severe.

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court