

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

1224

KA 09-00860

PRESENT: SMITH, J.P., LINDLEY, SCONIERS, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES T. JOHNSON, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (MICHAEL C. WALSH OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (SARAH E. RYAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (John L. Michalski, A.J.), rendered April 22, 2009. The judgment convicted defendant, upon a nonjury verdict, of driving while intoxicated, a class E felony, aggravated unlicensed operation of a motor vehicle in the first degree and failure to stay within a single lane.

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

Memorandum: Defendant appeals from a judgment convicting him, following a nonjury trial, of felony driving while intoxicated (Vehicle and Traffic Law § 1192 [3]; § 1193 [1] [c] [former (i)]), aggravated unlicensed operation of a motor vehicle in the first degree (§ 511 [3] [a] [i]) and failure to stay within a single lane (§ 1128 [a]). Defendant failed to preserve for our review his contention that the evidence is legally insufficient to support the conviction because his motion for a trial order of dismissal "was not specifically directed at the ground[s] advanced on appeal" (*People v Vassar*, 30 AD3d 1051, 1052, *lv denied* 7 NY3d 796; *see People v Hawkins*, 11 NY3d 484, 492; *People v Gray*, 86 NY2d 10, 19). In any event, we reject that contention (*see generally People v Bleakley*, 69 NY2d 490, 495). The sentence is not unduly harsh or severe.

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court