

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

1316

KA 09-00726

PRESENT: MARTOCHE, J.P., SCONIERS, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BURNIE DANIELS, ALSO KNOWN AS BURNIE E. DANIELS,
ALSO KNOWN AS BERNIE E. DANIELS,
DEFENDANT-APPELLANT.

JOSEPH T. JARZEMBEK, BUFFALO, FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (KEVIN T. FINNELL OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered March 12, 2009. The judgment convicted defendant, upon his plea of guilty, of criminal mischief 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 mischief in the third degree (Penal Law § 145.05 [2]), defendant contends that his plea was not voluntarily entered because County Court and the People forced him to plead guilty to that crime. Defendant failed to preserve that contention for our review because he did not move to withdraw the plea or to vacate the judgment of conviction (*see People v Garrett*, 60 AD3d 1389) and, in any event, his contention lacks merit. Additionally, defendant failed to preserve for our review his challenge to the factual sufficiency of the plea allocution (*see People v Lopez*, 71 NY2d 662, 665), and his challenge does not fall within the rare exception to the preservation requirement (*see id.* at 666).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court