

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

1394

KA 10-01255

PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TAHEED M. MOFFETT, ALSO KNOWN AS TAHEED MOFFETT,
ALSO KNOWN AS T. MOFFETT, DEFENDANT-APPELLANT.

GARY A. HORTON, PUBLIC DEFENDER, BATAVIA (BRIDGET L. FIELD OF
COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (DAVID E. GANN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered May 11, 2010. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the fifth degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a controlled substance in the fifth degree (Penal Law § 220.06 [1]). "Defendant failed to preserve for our review his contention that County Court erred in failing to advise him of his right to a hearing concerning his alleged violations of the plea agreement prior to imposing an enhanced sentence" (*People v Gibson*, 52 AD3d 1227, 1227; see also *People v Sprague*, 82 AD3d 1649, lv denied 17 NY3d 801; *People v Perry*, 252 AD2d 990, lv denied 92 NY2d 929). In any event, that contention is without merit. Pursuant to the plea agreement, in order to receive the promised sentence, defendant was required to comply with a curfew, to appear as required by the probation officer preparing the presentence report and to remain arrest free. Defendant admitted that he had been rearrested and violated his curfew (see *People v Valencia*, 3 NY3d 714, 715-716; *People v Laskowski*, 46 AD3d 1383), and he did not contest the remaining accusations concerning violations of the sentencing conditions. Consequently, we conclude that defendant was not entitled to a hearing before the court enhanced his sentence (see generally *People v Figgins*, 87 NY2d 840).

The sentence is not unduly harsh or severe.

Entered: December 23, 2011

Frances E. Cafarell
Clerk of the Court