

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

201

KA 09-01721

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL J. WELLS, ALSO KNOWN AS MICHAEL WELLS,
DEFENDANT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (WILLIAM G. ZICKL OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered December 9, 2009. The judgment convicted defendant, upon his plea of guilty, of robbery in the first 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 robbery in the first degree (Penal Law § 160.15 [4]), defendant contends that we should have granted his pretrial motion to change venue, which was previously before us pursuant to CPL 230.20 (2). Our prior decision denying that motion, which is unpublished, constitutes the law of the case (*see People v Scalercio*, 10 AD3d 697, *lv denied* 3 NY3d 742; *People v Knapp*, 113 AD2d 154, 158, *cert denied* 479 US 844), and defendant has made no showing that it "was based on manifest error, or that exceptional circumstances" warrant reconsideration of his motion (*Scalercio*, 10 AD3d at 697). The sentence is not unduly harsh or severe.

Entered: March 16, 2012

Frances E. Cafarell
Clerk of the Court