

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

830

KA 09-02641

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, LINDLEY, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PATRICK GUILLORY, ALSO KNOWN AS TIMOTHY
HUNTER, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (KRISTEN MCDERMOTT OF
COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL
OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County
(John J. Brunetti, A.J.), rendered February 27, 2009. The judgment
convicted defendant, upon his plea of guilty, of burglary 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
guilty plea, of burglary in the third degree (Penal Law § 140.20),
defendant contends that his sentence must be vacated because he was
sentenced as a second felony offender and the People did not file a
predicate felony offender statement, as required by CPL 400.21.
Defendant failed to preserve that contention for our review (see
People v Pellegrino, 60 NY2d 636, 637; *People v Butler*, 96 AD3d 1367,
1368; *People v Mateo*, 53 AD3d 1111, 1112, lv denied 11 NY3d 791). In
any event, by admitting in open court that he had been convicted of a
prior felony offense in New York within the past 10 years, defendant
waived strict compliance with CPL 400.21 (see *People v Perez*, 85 AD3d
1538, 1541; *People v Vega*, 49 AD3d 1185, 1186, lv denied 10 NY3d 965).

Entered: August 17, 2012

Frances E. Cafarell
Clerk of the Court