

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

1113

**KA 13-00692**

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, SCONIERS, AND WHALEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANDREW JOHNSON, DEFENDANT-APPELLANT.

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SUSAN M. KARALUS, WILLIAMSVILLE, FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Erie County Court (Thomas P. Franczyk, J.), rendered September 12, 2011. The judgment convicted defendant, upon his plea of guilty, of robbery in the second 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 robbery in the second degree (Penal Law § 160.10 [2] [b]). Defendant's valid waiver of the right to appeal encompasses his contention concerning the denial of his request for youthful offender status (*see People v Elshabazz*, 81 AD3d 1429, 1429, *lv denied* 16 NY3d 858). In any event, that contention is without merit. "[County] Court carefully considered the request to be considered a youthful offender and stated the reasons for its denial" (*People v Williams*, 37 AD3d 1193, 1194), and it cannot be said that the court abused its discretion in denying that request (*see id.*; *Elshabazz*, 81 AD3d at 1429; *People v Smith*, 286 AD2d 878, 878-879, *lv denied* 98 NY2d 641).

Entered: November 15, 2013

Frances E. Cafarell  
Clerk of the Court