

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

1370

KA 13-01198

PRESENT: SCUDDER, P.J., CENTRA, CARNI, VALENTINO, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES L. LINDSAY, III, DEFENDANT-APPELLANT.

ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (LYLE T. HAJDU OF COUNSEL),
FOR DEFENDANT-APPELLANT.

DAVID W. FOLEY, DISTRICT ATTORNEY, MAYVILLE (JOSEPH M. CALIMERI OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Chautauqua County Court (John L. LaMancuso, A.J.), rendered June 13, 2013. The judgment convicted defendant, upon his plea of guilty, of, inter alia, reckless endangerment in the first degree and driving while intoxicated, a misdemeanor (2 counts).

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, inter alia, reckless endangerment in the first degree (Penal Law § 120.25) and two counts of driving while intoxicated (Vehicle and Traffic Law § 1192 [3]). We reject defendant's contention that County Court erred in denying his pro se motion to withdraw his plea without conducting an adequate inquiry. The record establishes that the court afforded defendant the requisite "reasonable opportunity to present his contentions" (*People v Tinsley*, 35 NY2d 926, 927; see *People v Carter-Doucette*, 124 AD3d 1323, 1324, lv denied 25 NY3d 988), and properly denied the motion inasmuch as defendant's "claims were conclusory and unsubstantiated" (*People v Temple*, 89 AD3d 644, 644, lv denied 19 NY3d 968). We also reject defendant's contention that the court erred in failing to assign him new counsel before making that determination. "[T]he record belies defendant's contention that defense counsel took a position adverse to that of defendant in his pro se motion to withdraw the plea, and thus there was no reason for the court to assign new counsel" (*People v Rossborough*, 105 AD3d 1332, 1333, lv denied 21 NY3d 1045).

Finally, we conclude that defendant's sentence is not unduly

harsh or severe.

Entered: December 23, 2015

Frances E. Cafarell
Clerk of the Court