

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

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KA 07-00668

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

COLLIN D. OAKLEY, JR., DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LESLIE E. SWIFT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (John R. Schwartz, A.J.), rendered January 17, 2007. The judgment convicted defendant, upon his plea of guilty, of burglary 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 burglary in the second degree (Penal Law § 140.25 [2]). Defendant failed to preserve for our review his contention that County Court erred in failing to determine whether he should be afforded youthful offender status (*see People v Ficchi*, 64 AD3d 1195, *lv denied* 13 NY3d 859; *People v Fowler*, 28 AD3d 1183, *lv denied* 7 NY3d 788). In any event, that contention is without merit inasmuch as defendant was "previously . . . adjudicated a youthful offender following conviction of a felony," and he therefore was ineligible for youthful offender treatment with respect to the instant conviction (CPL 720.10 [2] [c]; *see People v Robinson*, 145 AD2d 949, *lv denied* 73 NY2d 981). The sentence is not unduly harsh or severe.

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court