

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

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KA 22-00456

PRESENT: WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JACOREY RICHARDSON, DEFENDANT-APPELLANT.

LEAH R. NOWOTARSKI, PUBLIC DEFENDER, WARSAW (FARES A. RUMI OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered March 23, 2022. The judgment convicted defendant upon his plea of guilty of attempted assault in the first degree and assault 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 attempted assault in the first degree (Penal Law §§ 110.00, 120.10 [1]) and assault in the second degree (§ 120.05 [7]). County Court initially imposed a term of interim probation in accordance with the plea agreement (see CPL 390.30 [6]), but then, following a hearing, revoked defendant's interim probation upon determining that he violated its conditions, and sentenced him to concurrent terms of incarceration, the longest of which is a determinate term of 11 years.

Defendant failed to preserve his contention that imposition of the conditions of his interim probation requiring him to "not be charged with a crime and . . . refrain from violation of any law" deprived him of the presumption of innocence "inasmuch as he did not object to the [conditions] or move to withdraw his guilty plea[] or to vacate the judgment[] of conviction" (*People v Bishop*, 198 AD3d 1381, 1382 [4th Dept 2021], *lv denied* 37 NY3d 1095 [2021]). In any event, those were lawful presentence conditions (see *People v Anonymous*, 34 NY3d 631, 646 [2020]; *People v Reynolds*, 27 NY3d 1099, 1101 [2016]; *People v Outley*, 80 NY2d 702, 713 [1993]).

We reject defendant's contention that the court erred in determining that he violated the terms and conditions of his interim probation, thereby warranting imposition of a sentence of

incarceration. Contrary to defendant's contention, the "hearing conducted by the court was sufficient pursuant to CPL 400.10 (3) to enable the court to 'assure itself that the information upon which it bas[ed] the sentence [was] reliable and accurate' " (*People v Rollins*, 50 AD3d 1535, 1536 [4th Dept 2008], *lv denied* 10 NY3d 939 [2008], quoting *Outley*, 80 NY2d at 712; see *People v Koons*, 187 AD3d 1638, 1639 [4th Dept 2020]), and the court's inquiry "was of sufficient depth to enable the court to determine that defendant failed to comply with the terms and conditions of his interim probation" (*People v Butler*, 151 AD3d 1959, 1960 [4th Dept 2017], *lv denied* 30 NY3d 948 [2017] [internal quotation marks omitted]; see *People v Wissert*, 85 AD3d 1633, 1633 [4th Dept 2011], *lv denied* 17 NY3d 956 [2011]). Inasmuch as the court explained the conditions of the interim probation to defendant during the plea colloquy and provided him with a written copy, which he acknowledged and signed, the court acted within its discretion in imposing a sentence of incarceration in accordance with the plea agreement upon finding that defendant failed to comply with the conditions (see *People v Mays*, 181 AD3d 874, 875 [2d Dept 2020], *lv denied* 36 NY3d 1058 [2021]; see also *Koons*, 187 AD3d at 1639; *Wissert*, 85 AD3d at 1633).

To the extent defendant contends that the sentence imposed is illegal, the contention lacks merit (see generally *People v Streeter*, 71 AD3d 1463, 1464 [4th Dept 2010], *lv denied* 14 NY3d 893 [2010]).

We have reviewed defendant's remaining contentions and conclude that none warrants reversal or modification of the judgment.