

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

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KA 23-00288

PRESENT: WHALEN, P.J., BANNISTER, GREENWOOD, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANDREW S. FISHER, DEFENDANT-APPELLANT.

ROSEMARIE RICHARDS, GILBERTSVILLE, FOR DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JOHN C. TUNNEY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Patrick F. McAllister, A.J.), rendered December 5, 2022. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a controlled substance in the fourth 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 criminal possession of a controlled substance in the fourth degree (Penal Law §§ 110.00, 220.09 [2]). Defendant contends that County Court erred in imposing an enhanced sentence without holding a hearing or otherwise making a sufficient inquiry regarding his alleged violation of the conditions of the plea agreement. That contention is not preserved for our review inasmuch as defendant " 'failed to request such a hearing and did not move to withdraw his plea on that ground' " (*People v Scott*, 200 AD3d 1729, 1730 [4th Dept 2021]). In any event, the contention lacks merit. Under the circumstances, the court was not required to conduct a hearing, and it provided "[b]oth defendant and his counsel . . . ample opportunity to refute the court's assertions that defendant had violated the plea terms" (*People v Albergotti*, 17 NY3d 748, 750 [2011]; see generally *People v Semple*, 23 AD3d 1058, 1059-1060 [4th Dept 2005], *lv denied* 6 NY3d 852 [2006]), specifically by his failure to appear at sentencing and failure to report to probation as directed by the court (see *People v Baker*, 204 AD3d 1471, 1472 [4th Dept 2022], *lv denied* 38 NY3d 1069 [2022]; *People v Winship*, 26 AD3d 768, 768-769 [4th Dept 2006], *lv denied* 6 NY3d 899 [2006]; see also *Albergotti*, 17 NY3d at 749-750).

Entered: February 9, 2024

Ann Dillon Flynn
Clerk of the Court