

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

386

KA 14-00931

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHAD M. JOHNSTON, DEFENDANT-APPELLANT.

NORMAN P. EFFMAN, PUBLIC DEFENDER, WARSAW, FOR DEFENDANT-APPELLANT.

DONALD G. O'GEEN, DISTRICT ATTORNEY, WARSAW (VINCENT A. HEMMING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered April 24, 2014. The judgment convicted defendant, upon his plea of guilty, of attempted assault on a peace officer, police officer, fireman or emergency medical services professional.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of attempted assault on a peace officer, police officer, fireman or emergency medical services professional (Penal Law §§ 110.00, 120.08), defendant contends that he was denied due process at sentencing when County Court imposed a sentence based on defendant's postplea arrest without determining that the information upon which it was basing the sentence was reliable and accurate. As a preliminary matter, we note that defendant's contention is not encompassed by the waiver of the right to appeal (*see People v Kolata*, 119 AD3d 1376, 1377; *see generally People v Peck*, 90 AD3d 1500, 1501). However, defendant failed to preserve his contention for our review because he "failed to object to the sufficiency of the court's inquiry or to request a hearing, and he did not move to withdraw his plea on that ground" (*People v Hassett*, 119 AD3d 1443, 1444, *lv denied* 24 NY3d 961). We decline to exercise our power to review defendant's contention as a matter of discretion in the interest of justice (*see* CPL 470.15 [3] [c]).

Entered: June 10, 2016

Frances E. Cafarell
Clerk of the Court