

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

924

KA 15-00062

PRESENT: SMITH, J.P., CENTRA, DEJOSEPH, NEMOYER, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENDEL A. JORDAN, DEFENDANT-APPELLANT.

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (CARA A. WALDMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

KENDEL A. JORDAN, DEFENDANT-APPELLANT PRO SE.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA, FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, A.J.), rendered October 29, 2014. The judgment convicted defendant, upon his plea of guilty, of criminal sale of a controlled substance in the third degree (two counts).

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

Memorandum: On appeal from a judgment convicting him upon a plea of guilty of two counts of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]), defendant contends in his pro se supplemental brief that the grand jury proceedings were impaired because the prosecutor presented inadmissible evidence. "It is well settled that '[a] guilty plea generally results in a forfeiture of the right to appellate review of any nonjurisdictional defects in the proceedings' " (*People v Granger*, 96 AD3d 1669, 1669, *lv denied* 19 NY3d 1102, quoting *People v Fernandez*, 67 NY2d 686, 688). Therefore, "[b]y pleading guilty, defendant forfeited his present contention that the grand jury proceedings were impaired, inasmuch as the alleged error did not render the accusatory instrument jurisdictionally defective" (*People v Monacelli*, 299 AD2d 916, 916, *lv denied* 99 NY2d 617; see generally *People v Hansen*, 95 NY2d 227, 232; *People v Newkirk*, 133 AD3d 1364, 1365, *lv denied* 26 NY3d 1148). The remaining contentions in defendant's pro se supplemental brief are based on facts outside the record and thus must be raised by way of a motion pursuant to CPL 440.10 (see *People v Miller*, 68 AD3d 1135, 1135, *lv denied* 14 NY3d 803; see also *People v Evans*, 137 AD3d 1683, 1683-1684, *lv denied* 27 NY3d 1131).

Finally, contrary to defendant's contention in his main brief,

the sentence is not unduly harsh or severe.

Entered: August 23, 2017

Frances E. Cafarell
Clerk of the Court