

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

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KA 16-01005

PRESENT: CENTRA, J.P., CARNI, NEMOYER, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LLOYD W. WHEELER, III, DEFENDANT-APPELLANT.

CARA A. WALDMAN, FAIRPORT, FOR DEFENDANT-APPELLANT.

LLOYD W. WHEELER, III, DEFENDANT-APPELLANT PRO SE.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (COLLEEN SULLIVAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, A.J.), rendered June 1, 2016. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree.

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 criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]), defendant contends that the sentence is unduly harsh and severe. We reject that contention. Defendant received the benefit of an advantageous plea agreement in which he pleaded guilty to one count in satisfaction of the two counts charged in the indictment, and County Court imposed the minimum term of incarceration of 3½ years (see § 70.02 [3] [b]), to be followed by three years of postrelease supervision (see § 70.45 [2] [f]). In his pro se supplemental letter brief, defendant further contends that he was denied effective assistance of counsel by defense counsel's alleged failure to obtain a plea offer to a misdemeanor. To the extent that defendant's contention survives his guilty plea, we conclude that it lacks merit (see *People v Rockwell*, 137 AD3d 1586, 1586 [4th Dept 2016]; see generally *People v Ford*, 86 NY2d 397, 404 [1995]). Where, as here, "an indictment charges . . . a class C violent felony offense, then a plea of guilty must include at least a plea of guilty to a class D violent felony offense" (CPL 220.10 [5] [d] [ii]).

Entered: March 16, 2018

Mark W. Bennett
Clerk of the Court