

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

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KA 18-02332

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, BANNISTER, AND OGDEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

VERNELLE C. BARNES, DEFENDANT-APPELLANT.

MARK D. FUNK, CONFLICT DEFENDER, ROCHESTER (FABIENNE SANTACROCE OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Charles A. Schiano, Jr., J.), rendered April 16, 2018. The judgment convicted defendant upon a plea of guilty of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third 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]) and criminal possession of a weapon in the third degree (§ 265.02 [1]), defendant contends that his plea was not voluntary, intelligent and knowing because Supreme Court misinformed defendant that he retained the right to appeal the court's determination relating to the sufficiency of the evidence before the grand jury. Defendant failed to preserve that contention for our review (*see generally People v Williams*, 27 NY3d 212, 224 [2016]; *People v Barrett*, 153 AD3d 1600, 1600-1601 [4th Dept 2017], *lv denied* 30 NY3d 1058 [2017]), and we decline to exercise our power to review it as a matter of discretion in the interest of justice (*see CPL* 470.15 [3] [c]).

Entered: May 5, 2023

Ann Dillon Flynn
Clerk of the Court