

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

625

**KA 22-00598**

PRESENT: LINDLEY, J.P., CURRAN, MONTOUR, GREENWOOD, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MATTHEW BRENNAN, DEFENDANT-APPELLANT.

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CAMBARERI & BRENNECK, SYRACUSE (MELISSA K. SWARTZ OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRADLEY W. OASTLER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Stephen J. Dougherty, J.), rendered March 15, 2022. The judgment convicted defendant upon a plea of guilty of manslaughter in the first degree and endangering the welfare of a child.

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 manslaughter in the first degree (Penal Law § 125.20 [4]) and endangering the welfare of a child (§ 260.10 [1]). Defendant's contention that County Court abused its discretion or otherwise erred in sentencing him because the presentence report was incomplete and inadequate is not preserved for our review (*see generally People v Rodriguez*, 199 AD3d 1458, 1459 [4th Dept 2021], *lv denied* 37 NY3d 1164 [2022]; *People v Morrow*, 167 AD3d 1516, 1517-1518 [4th Dept 2018], *lv denied* 33 NY3d 951 [2019]). We reject defendant's related contention that he received ineffective assistance of counsel at sentencing inasmuch as defendant has not established that the sentence imposed was based upon the lack of information (*see People v Vaughan*, 20 AD3d 940, 941-942 [4th Dept 2005], *lv denied* 5 NY3d 857 [2005]; *see generally Rodriguez*, 199 AD3d at 1459). To the extent that defendant's contention involves matters outside the record, "a CPL 440.10 proceeding is the appropriate forum for review of the . . . claim" (*People v Barzee*, 204 AD3d 1422, 1423 [4th Dept 2022], *lv denied* 38 NY3d 1132 [2022] [internal quotation marks omitted]; *see People v Jones*, 214 AD3d 1410, 1411 [4th Dept 2023]).

We perceive no basis in the record for us to exercise our power to modify the sentence as a matter of discretion in the interest of

justice (see CPL 470.15 [6] [b]).

Entered: October 6, 2023

Ann Dillon Flynn  
Clerk of the Court