

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

786

KA 13-00073

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, SCONIERS, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KACIE MUNSON, DEFENDANT-APPELLANT.

ROBERT TUCKER, PALMYRA, FOR DEFENDANT-APPELLANT.

RICHARD M. HEALY, DISTRICT ATTORNEY, LYONS (BRUCE A. ROSEKRANS OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Wayne County Court (John B. Nesbitt, J.), rendered December 13, 2012. The judgment convicted defendant, upon his plea of guilty, of assault in the first degree.

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 assault in the first degree (Penal Law § 120.10 [1]). Defendant failed to move to withdraw his plea or to vacate the judgment of conviction and thus failed to preserve for our review his contention that his plea was not knowing and voluntary (*see People v Jones*, 118 AD3d 1354, 1354). Defendant also failed to preserve for our review his contention that County Court improperly delegated to the prosecutor the authority to conduct a portion of the plea allocution (*see People v Swontek* [appeal No. 1], 289 AD2d 989, 989). This case does not fall within the narrow exception to the preservation rule (*see People v Lopez*, 71 NY2d 662, 666).

Finally, the sentence is not unduly harsh or severe.

Entered: August 8, 2014

Frances E. Cafarell
Clerk of the Court