

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

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KA 11-01537

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAMIAN JOHNSON, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (KIMBERLY F. DUGUAY OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS OF COUNSEL), FOR RESPONDENT.

Appeal from a resentence of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered June 7, 2011. Defendant was resentenced by imposing a period of five years of postrelease supervision upon his conviction of sodomy in the first degree.

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

Memorandum: Defendant appeals from a resentence that corrected a *Sparber* error (*People v Sparber*, 10 NY3d 457, 472). Contrary to defendant's contention, Supreme Court did not abuse its discretion in denying his request for an adjournment to retrieve legal research he had prepared with respect to "his sentence and conviction generally" (see *People v Carter*, 50 AD3d 1518, 1518). The record established that defendant sought to withdraw his plea based upon the alleged involuntariness of his plea. Inasmuch as the resentencing proceeding is limited to correcting a procedural error by "mak[ing] the required pronouncement" of the appropriate sentence (*Sparber*, 10 NY3d at 471; see *People v Lingle*, 16 NY3d 621, 635), the court could not have considered any information defendant had prepared with respect to whether he should be permitted to withdraw his plea.

Entered: March 20, 2015

Frances E. Cafarell
Clerk of the Court