

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

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KA 14-00704

PRESENT: CENTRA, J.P., CARNI, DEJOSEPH, CURRAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BRADY J. DEMICK, DEFENDANT-APPELLANT.

ARZA FELDMAN, UNIONDALE, FOR DEFENDANT-APPELLANT.

KEITH A. SLEP, DISTRICT ATTORNEY, BELMONT, FOR RESPONDENT.

Appeal from a judgment of the Allegany County Court (Thomas P. Brown, J.), rendered September 30, 2013. The judgment convicted defendant, upon his plea of guilty, of burglary in the second 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 burglary in the second degree (Penal Law § 140.25 [2]). Defendant contends that County Court induced his plea with a promise of granting a "violent felony override," a promise which defendant maintains the court lacked authority to make (see *People v Ballato*, 128 AD3d 846, 847). Contrary to defendant's contention, however, the record establishes that "neither [his] eligibility for the shock incarceration program . . . , nor his ultimate admission to that program was a condition of the plea" (*People v Williams*, 84 AD3d 1417, 1418, *lv denied* 17 NY3d 863).

Entered: April 29, 2016

Frances E. Cafarell
Clerk of the Court