

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

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KA 13-01191

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALPHEAUS DAILEY, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PIOTR BANASIAK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered April 18, 2013. The judgment convicted defendant, upon his plea of guilty, of robbery 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 robbery in the first degree (Penal Law § 160.15 [4]). Defendant contends that he was deprived of effective assistance of counsel inasmuch as Supreme Court forced him either to accept or to reject an existing plea offer after defendant complained that his attorney was not adequately representing him, but before the court assigned him new counsel. That contention does not survive the guilty plea because there is no indication in the record that the alleged ineffective assistance affected the plea that defendant later accepted (*see People v Petgen*, 55 NY2d 529, 534-535, *rearg denied* 57 NY2d 674; *People v Granger*, 96 AD3d 1669, 1670, *lv denied* 19 NY3d 1102). The sentence is not unduly harsh or severe.

Entered: May 6, 2016

Frances E. Cafarell
Clerk of the Court