

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

669

**KA 14-00007**

PRESENT: WHALEN, P.J., SMITH, CENTRA, PERADOTTO, AND CARNI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANTONIO L. JAMES, DEFENDANT-APPELLANT.

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

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Douglas A. Randall, J.), rendered November 25, 2013. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the fourth degree (three counts).

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of three counts of grand larceny in the fourth degree (Penal Law § 155.30 [1]), defendant contends that County Court erred in ordering him to pay restitution without conducting a hearing. Defendant's contention " 'is not properly before this Court for review because [defendant] did not request a hearing to determine the [proper amount of restitution] or otherwise challenge the amount of the restitution order during the sentencing proceeding' " (*People v Kirkland*, 105 AD3d 1337, 1338, lv denied 21 NY3d 1043, quoting *People v Horne*, 97 NY2d 404, 414 n 3). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). We reject defendant's further contention that the sentence is unduly harsh and severe.

Entered: September 30, 2016

Frances E. Cafarell  
Clerk of the Court