

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

1061

KA 15-01230

PRESENT: WHALEN, P.J., SMITH, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SHANNON B. MURCIN, DEFENDANT-APPELLANT.

NORMAN P. EFFMAN, PUBLIC DEFENDER, WARSAW (GREGORY A. KILBURN OF COUNSEL), FOR DEFENDANT-APPELLANT.

DONALD G. O'GEEN, DISTRICT ATTORNEY, WARSAW (VINCENT A. HEMMING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered December 4, 2014. The judgment convicted defendant, upon his plea of guilty, of driving while ability impaired by drugs.

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 driving while ability impaired by drugs as a class E felony (Vehicle and Traffic Law §§ 1192 [4]; 1193 [1] [c] [i] [A]), defendant contends that his plea was not knowing, voluntary, and intelligent because the no-arrest condition of the plea agreement was ambiguous, and that County Court should have conducted a hearing pursuant to *People v Outley* (80 NY2d 702) before imposing an enhanced sentence based on his violation of that condition. Inasmuch as defendant conceded that his postplea arrests violated the plea agreement, withdrew his motion seeking withdrawal of his plea, and did not move to vacate the judgment of conviction, his contentions are not preserved for our review (see *People v Lorenz*, 120 AD3d 1528, 1529, lv denied 24 NY3d 1045; see also *People v Hassett*, 119 AD3d 1443, 1444, lv denied 24 NY3d 961; *People v Bouwens*, 90 AD3d 1557, 1558, lv denied 18 NY3d 955). We decline to exercise our power to review defendant's contentions as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]).

Entered: November 18, 2016

Frances E. Cafarell
Clerk of the Court