

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

467

KA 15-01034

PRESENT: WHALEN, P.J., LINDLEY, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CLAUDIE V. GOODENOW, JR., DEFENDANT-APPELLANT.

CARA A. WALDMAN, FAIRPORT, FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Allegany County Court (Thomas P. Brown, J.), rendered April 23, 2015. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the third degree, criminal possession of a controlled substance in the seventh degree and conspiracy in the fifth degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice and on the law by reducing the surcharge to 5% of the amount of restitution and as modified the judgment is affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of, inter alia, grand larceny in the third degree (Penal Law § 155.35), defendant contends only that County Court erred in assessing a 10% restitution collection surcharge pursuant to Penal Law § 60.27 (8). Although defendant's contention is unreserved for our review (*see People v Parker*, 137 AD3d 1625, 1626; *People v Kirkland*, 105 AD3d 1337, 1338, *lv denied* 21 NY3d 1043), we note that the People do not contest defendant's assertion that the People failed to file the requisite affidavit from an official listed in CPL 420.10 (8) (*see Parker*, 137 AD3d at 1626-1627; *People v Huddleston*, 134 AD3d 1458, 1459, *lv denied* 27 NY3d 966; *People v Perez*, 130 AD3d 1496, 1497). We exercise our power to review the issue as a matter of discretion in the interest of justice, and we modify the judgment by reducing the surcharge from 10% to 5% of the amount of the ordered restitution (*see Parker*, 137 AD3d at 1627; *Huddleston*, 134 AD3d at 1459; *Perez*, 130 AD3d at 1497).

Entered: April 28, 2017

Frances E. Cafarell
Clerk of the Court