

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

607

KA 15-00124

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALEX S. DUMBLETON, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (GARY M. PHILLIPS OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (SHIRLEY A. GORMAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered November 13, 2014. The judgment convicted defendant, upon his plea of guilty, of criminal contempt in the first degree.

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 criminal contempt in the first degree (Penal Law § 215.51 [b] [v]), defendant contends that County Court erred in enhancing his sentence based on a violation of the plea agreement without first conducting a hearing pursuant to *People v Outley* (80 NY2d 702). Although defendant's contention survives his valid waiver of the right to appeal (*see People v Scott*, 101 AD3d 1773, 1773, *lv denied* 21 NY3d 1019), defendant did not preserve that contention for our review inasmuch as "he failed to object to the alleged enhanced sentence and did not move to withdraw his plea or vacate the judgment of conviction on that ground" (*People v Epps*, 109 AD3d 1104, 1105; *see People v Mills*, 90 AD3d 1518, 1518, *lv denied* 18 NY3d 960), and we decline to exercise our power to review it as a matter of discretion in the interest of justice (*see CPL 470.15 [3] [c]*).

Entered: May 5, 2017

Frances E. Cafarell
Clerk of the Court