

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

**344**

**KA 17-00462**

PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JUAN CIRINO, DEFENDANT-APPELLANT.

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LINDA M. CAMPBELL, SYRACUSE, FOR DEFENDANT-APPELLANT.

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

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Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered February 5, 2015. The judgment convicted defendant, upon his plea of guilty, of murder in the second degree and assault 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 a plea of guilty, of murder in the second degree (Penal Law § 125.25 [1]) and assault in the first degree (§ 120.10 [1]). As defendant correctly concedes, he failed to preserve for our review his contention that County Court erred in accepting his guilty plea inasmuch as he did not move to withdraw the plea or to vacate the judgment of conviction (*see People v Karlsen*, 147 AD3d 1466, 1468 [4th Dept 2017], *lv denied* 29 NY3d 1082 [2017]), and this case does not fall within the rare exception to the preservation requirement (*see People v Lopez*, 71 NY2d 662, 666 [1988]). We reject defendant's challenge to the severity of the sentence.

Entered: March 16, 2018

Mark W. Bennett  
Clerk of the Court