

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

410

KA 17-01591

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ERIC S. ALLEN, DEFENDANT-APPELLANT.

XAVIER AND ASSOCIATES, P.C., ALBANY (MICHAEL C. VISCOSI OF COUNSEL),
FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered March 14, 2017. The judgment convicted defendant, upon his plea of guilty, of driving while intoxicated, as a class E felony.

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

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of driving while intoxicated (Vehicle and Traffic Law § 1192 [3]). Contrary to defendant's contention, by pleading guilty, he forfeited his right to claim that he was deprived of a speedy trial under CPL 30.30 (*see People v Walter*, 138 AD3d 1479, 1479 [4th Dept 2016], *lv denied* 27 NY3d 1141 [2016]). Defendant could not validly reserve his right to appellate review of his statutory speedy trial claim "by obtaining the consent of the prosecutor and the approval of [County Court] at the time the plea [was] entered" (*People v O'Brien*, 56 NY2d 1009, 1010 [1982]; *see People v Perez*, 51 AD3d 824, 824 [2d Dept 2008], *lv denied* 11 NY3d 740 [2008]).

Entered: March 23, 2018

Mark W. Bennett
Clerk of the Court