

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

577

**KA 16-01119**

PRESENT: SMITH, J.P., DEJOSEPH, CURRAN, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JONATHAN C. ROSSBOROUGH, DEFENDANT-APPELLANT.

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LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (CARA A. WALDMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (ZACHARY S. MAURER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Ontario County Court (William F. Kocher, J.), rendered June 1, 2016. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a forged instrument in the second degree.

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 criminal possession of a forged instrument in the second degree (Penal Law § 170.25). Defendant correctly concedes that he failed to preserve for our review his contention that County Court erred in ordering him to pay a 10% surcharge in connection with the collection of restitution. Defendant did not object to the surcharge or otherwise raise the issue, despite having had an opportunity to do so (*see People v Kosty*, 122 AD3d 1408, 1409 [4th Dept 2014], *lv denied* 24 NY3d 1220 [2015]; *People v Kirkland*, 105 AD3d 1337, 1338-1339 [4th Dept 2013], *lv denied* 21 NY3d 1043 [2013]; *cf. People v Goodenow*, 149 AD3d 1560, 1560-1561 [4th Dept 2017]). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see People v Camp*, 134 AD3d 1470, 1471 [4th Dept 2015], *lv denied* 27 NY3d 1066 [2016]; *cf. People v Parker*, 137 AD3d 1625, 1626-1627 [4th Dept 2016]). Contrary to defendant's further contention, the sentence is not unduly harsh or severe.

Entered: April 27, 2018

Mark W. Bennett  
Clerk of the Court