

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

1002

KA 19-00082

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL D. COUTURIER, DEFENDANT-APPELLANT.

CHARLES A. MARANGOLA, MORAVIA, 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 (Mark H. Fandrich, A.J.), rendered November 27, 2018. The judgment convicted defendant upon his plea of guilty of arson in the fourth 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 arson in the fourth degree (Penal Law § 150.05 [1]), defendant contends that County Court erred in failing to warn defendant during the plea proceeding that it could impose an enhanced sentence if he was arrested on new charges while awaiting sentencing. Defendant failed to move to withdraw the plea or to vacate the judgment of conviction on that ground and thus has failed to preserve his contention for our review (*see People v Fortner*, 23 AD3d 1058, 1058 [4th Dept 2005]; *People v Sundown*, 305 AD2d 1075, 1076 [4th Dept 2003]), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see CPL* 470.15 [3] [c]). We further conclude that the court did not abuse its discretion in refusing to grant defendant youthful offender status, and we decline to exercise our interest of justice jurisdiction to adjudicate defendant a youthful offender (*see People v Quinones*, 160 AD3d 1441, 1441 [4th Dept 2018], *lv denied* 31 NY3d 1152 [2018]; *People v Parmelee*, 184 AD2d 534, 535 [2d Dept 1992]). Contrary to defendant's remaining contention, the enhanced sentence is not unduly harsh or severe.

Entered: November 8, 2019

Mark W. Bennett
Clerk of the Court