

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

**905**

**KA 17-01821**

PRESENT: CARNI, J.P., LINDLEY, WINSLOW, BANNISTER, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RAEQUAN P. MCCALL, DEFENDANT-APPELLANT.

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CARRIE BLEAKLEY, CONFLICT DEFENDER, CANANDAIGUA (GARY MULDOON OF COUNSEL), FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (V. CHRISTOPHER EAGGLESTON OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Ontario County Court (William F. Kocher, J.), rendered April 21, 2017. The judgment convicted defendant upon a jury verdict of robbery in the first degree and robbery 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 a jury verdict of robbery in the first degree (Penal Law § 160.15 [4]) and robbery in the second degree (§ 160.10 [1]). Defendant contends that County Court failed to make the necessary determination whether he was eligible for youthful offender treatment (*see* CPL 720.10 [3]; *see generally* *People v Middlebrooks*, 25 NY3d 516, 525-527 [2015]; *People v Rudolph*, 21 NY3d 497, 499-501 [2013]). We reject that contention. “[A] court in an armed felony case can satisfy its obligation under *Middlebrooks* by declining to adjudicate the defendant a youthful offender after consideration on the record of factors pertinent to a determination whether an eligible youth should be adjudicated a youthful offender” (*People v McCall*, 177 AD3d 1395, 1396 [4th Dept 2019], *lv denied* 34 NY3d 1130 [2020] [internal quotation marks omitted]; *see* *People v Rice*, 175 AD3d 1826, 1826 [4th Dept 2019], *lv denied* 34 NY3d 1132 [2020]; *see also* *People v Stitt*, 140 AD3d 1783, 1784 [4th Dept 2016], *lv denied* 28 NY3d 937 [2016]). Here, the court “implicitly resolved the threshold issue of eligibility in defendant’s favor” (*People v Macon*, 169 AD3d 1439, 1440 [4th Dept 2019], *lv denied* 33 NY3d 978 [2019]; *see* *People v Keith B.J.*, 158 AD3d 1160, 1160 [4th Dept 2018]).

Contrary to defendant’s further contention, we conclude that the court did not abuse its discretion in refusing to grant him youthful offender status (*see* *McCall*, 177 AD3d at 1396; *Rice*, 175 AD3d at 1826;

*Macon*, 169 AD3d at 1440), particularly in light of the seriousness of the offense and defendant's failure to accept any responsibility (see *People v Ford*, 144 AD3d 1682, 1683 [4th Dept 2016], *lv denied* 28 NY3d 1184 [2017]), and we perceive no basis for exercising our discretion in the interest of justice to adjudicate defendant a youthful offender (*cf. Keith B.J.*, 158 AD3d at 1160-1161; *People v Thomas R.O.*, 136 AD3d 1400, 1402-1403 [4th Dept 2016]).

Finally, the sentence is not unduly harsh or severe.