

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

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**KA 18-00617**

PRESENT: CENTRA, J.P., PERADOTTO, CURRAN, WINSLOW, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EDISON N. HERNANDEZ, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (HELEN SYME OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered November 15, 2011. 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, inter alia, robbery in the first degree (Penal Law § 160.15 [4]). The charges arose from defendant and an unidentified codefendant robbing a victim at gunpoint as the victim sought to purchase marihuana from defendant.

Defendant contends that Supreme Court erred in admitting in evidence certain custodial statements that he made to a police investigator on the ground that those statements were not included in the pretrial CPL 710.30 notice. That contention is not preserved for our review (see CPL 470.05 [2]; *People v King*, 166 AD3d 1562, 1563 [4th Dept 2018], *lv denied* 34 NY3d 1017 [2019]; *People v Marvin*, 162 AD3d 1744, 1744 [4th Dept 2018], *lv denied* 32 NY3d 1066 [2018]), and we decline to exercise our power to review it as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). Defendant likewise failed to preserve for our review his contention that the court's statement to a panel of prospective jurors regarding his status in custody deprived him of a fair trial (see CPL 470.05 [2]). In any event, that contention is without merit (see *People v Pressley*, 156 AD3d 1384, 1384 [4th Dept 2017], *amended on rearg* 159 AD3d 1619 [4th Dept 2018], *lv dismissed* 31 NY3d 1085 [2018]; see also *People v Wilkins*, 175 AD3d 867, 869 [4th Dept 2019]). Contrary to defendant's related contention, defense counsel was not ineffective for failing to move for a mistrial on that meritless ground (see

*generally People v Stultz*, 2 NY3d 277, 287 [2004], *rearg denied* 3 NY3d 702 [2004]; *People v Jenkins*, 79 AD3d 1767, 1767 [4th Dept 2010], *lv denied* 16 NY3d 860 [2011]). We further conclude that defendant has not demonstrated the absence of strategic or other legitimate explanations for defense counsel's other alleged shortcomings (see *People v Benevento*, 91 NY2d 708, 712 [1998]; see also *People v Baker*, 14 NY3d 266, 270-271 [2010]). Viewing the evidence, the law, and the circumstances of this case in totality and as of the time of the representation, we conclude that defendant received meaningful representation (see generally *People v Baldi*, 54 NY2d 137, 147 [1981]).

Finally, the sentence is not unduly harsh or severe, particularly given that defendant was on probation for the commission of a nearly identical crime at the time he committed the crimes herein.