

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

1128

KA 16-00330

PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSIAH J. CHANDLER, DEFENDANT-APPELLANT.

KATHLEEN A. KUGLER, CONFLICT DEFENDER, LOCKPORT (JESSICA J. BURGASSER OF COUNSEL), FOR DEFENDANT-APPELLANT.

BRIAN D. SEAMAN, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Niagara County Court (Sara Sheldon, J.), rendered September 14, 2015. The judgment convicted defendant upon a plea of guilty of attempted murder in the second degree, assault in the first degree and criminal possession of a weapon in the second degree.

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

Memorandum: On appeal from a judgment convicting him upon a plea of guilty of, *inter alia*, attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]), defendant contends that County Court erred in accepting his plea. Defendant failed to preserve his contention for our review because he did not move to withdraw the plea or to vacate the judgment of conviction (*see People v Sierra-Garcia*, 195 AD3d 1574, 1574 [4th Dept 2021]), and this case does not fall within the narrow exception to the preservation rule set forth in *People v Lopez* (71 NY2d 662, 666 [1988]). To the extent that defendant's further contention that he was denied effective assistance of counsel survives his plea (*see People v Molski*, 179 AD3d 1540, 1540 [4th Dept 2020], *lv denied* 35 NY3d 972 [2020]; *see generally People v Rivera*, 195 AD3d 1591, 1591 [4th Dept 2021], *lv denied* 37 NY3d 995 [2021]), 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.

Entered: December 23, 2021

Ann Dillon Flynn
Clerk of the Court