

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

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KA 22-00335

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, GREENWOOD, AND NOWAK, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

GARRY E. BROWN, III, DEFENDANT-APPELLANT.

TIMOTHY J. BRENNAN, AUBURN, FOR DEFENDANT-APPELLANT.

BRITTANY GROME ANTONACCI, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered November 23, 2021. The judgment convicted defendant, upon his plea of guilty, of aggravated driving while intoxicated and aggravated unlicensed operation of a motor vehicle in the first 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 aggravated driving while intoxicated (Vehicle and Traffic Law §§ 1192 [2-a] [b]; 1193 [1] [c] [i] [B]) and aggravated unlicensed operation of a motor vehicle in the first degree (§ 511 [3] [a] [i]; [b]). Defendant contends that County Court erred in imposing an enhanced sentence without holding a hearing or otherwise providing defendant with sufficient time to speak. That contention is not preserved for our review inasmuch as defendant "failed to request such a hearing and did not move to withdraw his plea on that ground" (*People v Scott*, 200 AD3d 1729, 1730 [4th Dept 2021]). In any event, the contention lacks merit. Under the circumstances, the court was not required to conduct a hearing, and it provided "[b]oth defendant and his counsel . . . ample opportunity to refute the court's assertions that defendant had violated the plea terms" (*People v Albergotti*, 17 NY3d 748, 750 [2011]; see generally *People v Semple*, 23 AD3d 1058, 1059-1060 [4th Dept 2005], lv denied 6 NY3d 852 [2006]), specifically by his failure to appear at sentencing and failure to appear in court until nearly two years later, when he was apprehended on a bench warrant (see generally *People v Baker*, 204 AD3d 1471, 1472 [4th Dept 2022], lv denied 38 NY3d 1069 [2022]; *People v Winship*, 26 AD3d 768, 768-769 [4th Dept 2006], lv denied 6 NY3d 899 [2006]). Contrary to defendant's further contention, the enhanced sentence is not unduly harsh or severe.

We note, however, that the certificate of disposition, certificate of conviction, and uniform sentence and commitment form must be amended to correct a clerical error (see *People v Thurston*, 208 AD3d 1629, 1630 [4th Dept 2022]). All three forms erroneously state that defendant was convicted of aggravated unlicensed operation of a motor vehicle in the first degree under Vehicle and Traffic Law § 511 (3) (3), and each should be corrected to reflect that he was convicted of that offense under § 511 (3) (a) (i).