

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

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**KA 22-01824**

PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, GREENWOOD, AND NOWAK, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KARL O. DIGGS, DEFENDANT-APPELLANT.

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THOMAS L. PELYCH, HORNELL, FOR DEFENDANT-APPELLANT.

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

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Appeal from a judgment of the Cayuga County Court (Thomas G. Leone, J.), rendered October 6, 2022. The judgment convicted defendant upon a jury verdict of robbery in the first degree and criminal possession of a weapon in the third 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 [3]) and criminal possession of a weapon in the third degree (§ 265.02 [1]).

We reject defendant's contention that he was deprived of effective assistance of counsel by defense counsel's failure to make a timely pretrial motion for a *Mapp* hearing. The failure to make a particular pretrial motion generally does not, by itself, establish ineffective assistance of counsel (see *People v Rivera*, 71 NY2d 705, 709 [1988]). Here, there was little or no chance that the motion, even if timely, would have been successful (see generally *People v Thornton*, 213 AD3d 1332, 1333 [4th Dept 2023], *lv denied* 39 NY3d 1157 [2023]). Moreover, viewing the evidence, the law, and the circumstances of the case together and as of the time of representation, we conclude that defense counsel provided meaningful representation (see *People v Satterfield*, 66 NY2d 796, 798-800 [1985]; *People v Spencer*, 209 AD2d 1011, 1011 [4th Dept 1994], *lv denied* 84 NY2d 1039 [1995]).

Contrary to defendant's further contention, his sentence is not unduly harsh or severe.

Entered: May 3, 2024

Ann Dillon Flynn  
Clerk of the Court