

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

**324**

**KA 17-01970**

PRESENT: PERADOTTO, J.P., TROUTMAN, WINSLOW, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEARY MOORE, DEFENDANT-APPELLANT.

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LINDA M. CAMPBELL, SYRACUSE, FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER, JR., OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered June 9, 2017. The judgment convicted defendant, upon a plea of guilty, of conspiracy 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 plea of guilty, of conspiracy in the second degree (Penal Law § 105.15). Defendant contends that Supreme Court lacked the authority to enhance his agreed-upon sentence following defendant's alleged violation of the plea agreement. Although defendant's challenge is not, under the circumstances of this case, precluded by his waiver of the right to appeal (*see People v McDermott*, 68 AD3d 1453, 1453 [3d Dept 2009]; *People v Hastings*, 24 AD3d 954, 955 [3d Dept 2005]), defendant failed to preserve his contention for our review inasmuch as he did not object to the court's imposition of the enhanced sentence and did not move to withdraw his plea or vacate the judgment of conviction (*see People v Laurendi*, 126 AD3d 1401, 1402 [4th Dept 2015], *lv denied* 26 NY3d 1009 [2015]; *People v Viele*, 124 AD3d 1222, 1223 [4th Dept 2015]; *People v Scott*, 101 AD3d 1773, 1773-1774 [4th Dept 2012], *lv denied* 21 NY3d 1019 [2013]). We decline to exercise our power to review defendant's contention as a matter of discretion in the interest of justice (*see CPL 470.15 [3] [c]*).

Entered: April 24, 2020

Mark W. Bennett  
Clerk of the Court