

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

742

KA 20-00319

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, LINDLEY, AND NEMOYER, JJ.

---

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSEPH SEYMOUR, DEFENDANT-APPELLANT.

---

HUNT LAW OFFICE, SYRACUSE (MARSHA A. HUNT OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

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

---

Appeal from a judgment of the Onondaga County Court (Stephen J. Dougherty, J.), rendered September 27, 2018. The judgment convicted defendant upon his plea of guilty of criminal possession of a weapon in the second degree (three counts) and criminal possession of a firearm (three counts).

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 three counts of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) and three counts of criminal possession of a firearm (§ 265.01-b [1]). Contrary to defendant's contention, County Court did not err in concluding that defendant was not an eligible youth and therefore denying defendant youthful offender treatment (see *People v Williams*, 197 AD3d 975, 976 [4th Dept 2021], *lv denied* 37 NY3d 1062 [2021]; *People v Gonzalez*, 185 AD3d 1436, 1436-1437 [4th Dept 2020], *lv denied* 35 NY3d 1094 [2020]). Where, as here, a defendant is convicted of an armed felony (see CPL 1.20 [41]; *People v Meridy*, 196 AD3d 1, 3-6 [4th Dept 2021], *lv denied* 37 NY3d 973 [2021]), he or she may be adjudicated a youthful offender only where he or she was not the sole participant in the crime and his or her participation was relatively minor (see CPL 720.10 [3] [ii]), or where there are "mitigating circumstances that bear directly upon the manner in which the crime was committed" (CPL 720.10 [3] [i]), i.e., circumstances that "bear directly on defendant's personal conduct in committing the crime" (*People v Garcia*, 84 NY2d 336, 342 [1994]; see *People v Jones*, 166 AD3d 1479, 1480 [4th Dept 2018], *lv denied* 32 NY3d 1205 [2019]). As we noted in a codefendant's appeal, defendant was one of three participants who police officers saw pointing guns in the direction of a gas station after they heard gunshots while on patrol (see *Meridy*, 196 AD3d at 3, 7). The officers

heard more gunshots as the three men ran away and observed muzzle flash on at least one of the firearms. Defendant's participation in the offense was therefore not minor, and we also conclude that there were no mitigating circumstances bearing directly upon the manner in which the crime was committed (*see id.* at 7).

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

Entered: October 7, 2022

Ann Dillon Flynn  
Clerk of the Court