

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

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KA 22-00170

PRESENT: PERADOTTO, J.P., LINDLEY, BANNISTER, MONTOUR, AND OGDEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MATTHEW C. SMITH, DEFENDANT-APPELLANT.

ROSEMARIE RICHARDS, GILBERTSVILLE, FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Steuben County Court (Patrick F. McAllister, A.J.), rendered October 19, 2021. The judgment convicted defendant upon his plea of guilty of criminal possession of a controlled substance in the fifth degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of criminal possession of a controlled substance in the fifth degree (Penal Law § 220.06 [1]), defendant contends that his plea was not knowing, voluntary, and intelligent based on an alleged *Brady* violation (see generally *Brady v Maryland*, 373 US 83, 87 [1963]). Defendant's contention involves matters outside the record on appeal and must therefore be raised by way of a motion pursuant to CPL article 440 (see *People v Jefferson*, 125 AD3d 1463, 1464-1465 [4th Dept 2015], *lv denied* 25 NY3d 990 [2015]; *People v DeJesus*, 110 AD3d 1480, 1482 [4th Dept 2013], *lv denied* 22 NY3d 1155 [2014]; *People v Ellis*, 73 AD3d 1433, 1434 [4th Dept 2010], *lv denied* 15 NY3d 851 [2010]).

Entered: February 10, 2023

Ann Dillon Flynn
Clerk of the Court