

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

280

KA 20-01480

PRESENT: WHALEN, P.J., PERADOTTO, BANNISTER, MONTOUR, AND GREENWOOD, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DRAHCIR PARSON, DEFENDANT-APPELLANT.

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

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRADLEY W. OASTLER
OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Thomas J. Miller, J.), rendered July 31, 2020. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the third degree (three counts) and scheme to defraud 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 his plea of guilty, of, inter alia, three counts of grand larceny in the third degree (Penal Law § 155.35 [1]). Contrary to defendant's contention, County Court did not err in failing to order an alcohol and substance abuse evaluation before denying his application for judicial diversion pursuant to CPL 216.05. "According to the plain language of CPL 216.05 (1), '[s]uch an evaluation is permissive' . . . , and the determination whether to order such an evaluation 'clearly lies within the discretion of the court' " (*People v Carper*, 124 AD3d 1319, 1319-1320 [4th Dept 2015], *lv denied* 25 NY3d 949 [2015]). Here, we perceive no abuse of discretion. Moreover, we conclude that the court did not err in denying defendant's application. "Courts are afforded great deference in making judicial diversion determinations" (*People v Williams*, 105 AD3d 1428, 1428 [4th Dept 2013], *lv denied* 21 NY3d 1021 [2013]), and here the determination is supported by defendant's "extensive criminal history and threat to public safety" (*People v Powell*, 110 AD3d 1383, 1384 [3d Dept 2013]; *see Carper*, 124 AD3d at 1320).

Entered: March 24, 2023

Ann Dillon Flynn
Clerk of the Court