

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

797

KA 22-01169

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, OGDEN, AND NOWAK, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PATRICIA R. JORDAN, DEFENDANT-APPELLANT.

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

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JOHN C. TUNNEY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Philip J. Roche, J.), rendered April 12, 2022. The judgment convicted defendant, upon her plea of guilty, of attempted robbery in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting her, upon her plea of guilty, of attempted robbery in the first degree (Penal Law §§ 110.00, 160.15 [2]). We reject defendant's contention that County Court erred in denying her motion to withdraw her guilty plea. "[P]ermission to withdraw a guilty plea rests solely within the court's discretion . . . , and refusal to permit withdrawal does not constitute an abuse of discretion unless there is some evidence of innocence, fraud, or mistake in inducing [a] plea" (*People v Floyd*, 210 AD3d 1530, 1530 [4th Dept 2022], *lv denied* 39 NY3d 1072 [2023] [internal quotation marks omitted]; see *People v Alexander*, 203 AD3d 1569, 1570 [4th Dept 2022], *lv denied* 38 NY3d 1031 [2022]). In support of her motion, defendant submitted an affidavit from a codefendant purporting to absolve her of guilt. We conclude that the court did not abuse its discretion in denying the motion because, among other things, the circumstances rendered the codefendant's affidavit inherently unreliable (see *People v Sparcino*, 78 AD3d 1508, 1509 [4th Dept 2010], *lv denied* 16 NY3d 746 [2011]; see generally *People v Caruso*, 88 AD3d 809, 809-810 [2d Dept 2011], *lv denied* 18 NY3d 923 [2012]; *People v Griffin*, 4 AD3d 674, 675 [3d Dept 2004]).

Defendant contends that the period of incarceration to which she was sentenced is unduly harsh and severe. Where, as here, a defendant receives the minimum term of incarceration authorized by law, that part of the sentence cannot be considered unduly harsh or severe (see *People v Newsome*, 198 AD3d 1357, 1358-1359 [4th Dept 2021], *lv denied*

37 NY3d 1147 [2021]; *People v Griffith*, 181 AD3d 1170, 1172 [4th Dept 2020], *lv denied* 35 NY3d 1045 [2020]).

Entered: November 17, 2023

Ann Dillon Flynn
Clerk of the Court