

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

840

KA 22-00118

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, GREENWOOD, AND NOWAK, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEION M. PIERRE, DEFENDANT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR DEFENDANT-APPELLANT.

LORI PETTIT RIEMAN, DISTRICT ATTORNEY, LITTLE VALLEY, FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Michael M. Mohun, J.), rendered January 8, 2020. The judgment convicted defendant after a nonjury trial of arson 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 nonjury verdict of arson in the second degree (Penal Law § 150.15). Defendant contends that the evidence is legally insufficient to establish his identity as the person who intentionally set the fire, that he intended to damage the building by setting the fire, and that the building was in fact damaged as a result. Even assuming, arguendo, that defendant's contention is fully preserved for our review, we reject that contention. Further, viewing the evidence in light of the elements of the crime in this nonjury trial (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we conclude that, even if a different verdict would not have been unreasonable, it cannot be said that County Court failed to give the evidence the weight it should be accorded (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). We also reject defendant's contention that he was denied effective assistance of counsel. "There is nothing in the record to indicate that defendant was deprived of meaningful representation" at any stage of the proceedings (*People v Eckerd*, 161 AD3d 1508, 1509 [4th Dept 2018], *lv denied* 31 NY3d 1116 [2018]). " 'If defendant can demonstrate facts, not recited in the record, that would raise [a colorable] issue [of ineffective assistance], that issue can be pursued by motion pursuant to CPL 440.10' " (*People v Barbuto*, 126 AD3d 1501, 1504 [4th Dept 2015], *lv denied* 25 NY3d 1159 [2015]). Contrary to defendant's further contention, the sentence is not unduly harsh or severe. We have reviewed defendant's remaining contentions and conclude that none warrants reversal or modification of the

judgment.

Entered: November 17, 2023

Ann Dillon Flynn
Clerk of the Court