

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

23

KA 22-01178

PRESENT: SMITH, J.P., BANNISTER, NOWAK, DELCONTE, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SETH D. CUMMINGS, DEFENDANT-APPELLANT.

CHARLES D. STEINMAN, ESQ., PLLC, FAIRPORT (CHARLES D. STEINMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

KRISTYNA S. MILLS, DISTRICT ATTORNEY, WATERTOWN (MORGAN R. MAYER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Jefferson County Court (David A. Renzi, J.), rendered June 22, 2022. The judgment convicted defendant, upon a plea of guilty, of grand larceny in the fourth 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 grand larceny in the fourth degree (Penal Law § 155.30 [1]). County Court initially imposed a term of interim probation (see CPL 390.30 [6]), but the court subsequently revoked the interim probation and sentenced defendant to a term of incarceration. Defendant contends that the court failed to conduct a sufficient inquiry before determining that he violated the conditions of his interim probation and thereby revoked his interim probation in violation of his statutory and due process rights. Defendant failed to preserve that contention for our review (see CPL 470.05 [2]; *People v Benjamin-Foster*, 215 AD3d 1277, 1277-1278 [4th Dept 2023], *lv denied* 40 NY3d 927 [2023]; *People v Baxter*, 185 AD3d 1452, 1452 [4th Dept 2020], *lv denied* 35 NY3d 1092 [2020]), and we decline to exercise our power to review it as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]; *Benjamin-Foster*, 215 AD3d at 1278; *Baxter*, 185 AD3d at 1452).

Entered: February 2, 2024

Ann Dillon Flynn
Clerk of the Court