

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D70336  
T/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 21, 2022

MARK C. DILLON, J.P.  
LINDA CHRISTOPHER  
WILLIAM G. FORD  
JANICE A. TAYLOR, JJ.

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2021-00012

DECISION & ORDER

The People, etc., respondent,  
v Quran Neischer, appellant.

(S.C.I. No. 90144/19)

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Patricia Pazner, New York, NY (Lynn W. L. Fahey of counsel), for appellant.

Michael E. McMahon, District Attorney, Staten Island, NY (Morrie I. Kleinbart of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Richmond County (Mario F. Mattei, J.), rendered August 26, 2019, convicting him of attempted criminal possession of a weapon in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

On appeal, the defendant challenges only his designation as a violent felony offender pursuant to Penal Law § 70.02(1)(d) and CPL 220.20(1).

In the instant case, the defendant pleaded guilty to attempted criminal possession of a weapon in the third degree under a superior court information charging the greater offense of criminal possession of a weapon in the third degree. Since attempted criminal possession of a weapon in the third degree was not charged as the only count or the top count, but rather, was a lesser-included offense of the only count in the superior court information, the defendant's conviction of that offense constitutes a conviction of a class E violent felony offense (*see* Penal Law § 70.02[1][d]; CPL 220.20[1]). Accordingly, the defendant's contention that he should not have

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been sentenced as a violent felony offender is without merit (*see People v Dargan*, 101 AD3d 1143, 1144; *People v Henry*, 52 AD3d 841, 843-844; *cf. People v Dickerson*, 85 NY2d 870).

DILLON, J.P., CHRISTOPHER, FORD and TAYLOR, JJ., concur.

ENTER:

  
Maria T. Fasulo  
Clerk of the Court