

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

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KA 04-02819

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PETER R. MCNALLY, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LORETTA S. COURTNEY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Kenneth R. Fisher, J.), rendered November 8, 2004. The judgment convicted defendant, upon his plea of guilty, of felony driving while intoxicated.

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 felony driving while intoxicated (Vehicle and Traffic Law § 1192 [3]; § 1193 [1] [c] [former (i)]). Supreme Court did not abuse its discretion in denying the pro se motion of defendant to withdraw his plea (*see generally People v Alexander*, 97 NY2d 482, 485-486). The "protestations [of defendant] as to his . . . confusion and innocence ring hollow" in light of his admissions during the plea colloquy and his statement that he understood that he was giving up certain rights, including the right to a jury trial, by pleading guilty (*id.* at 486).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court