

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

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**KA 05-02437**

PRESENT: SMITH, J.P., CENTRA, FAHEY, PERADOTTO, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THERESA D. HAMILTON, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (WILLIAM CLAUSS OF COUNSEL), FOR DEFENDANT-APPELLANT.

THERESA D. HAMILTON, DEFENDANT-APPELLANT PRO SE.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (PATRICK H. FIERRO OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Richard A. Keenan, J.), rendered September 30, 2005. The judgment convicted defendant, upon her plea of guilty, of criminal possession of a forged instrument in the second degree (three counts).

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 three counts of criminal possession of a forged instrument in the second degree (Penal Law § 170.25). The contention of defendant that she was denied effective assistance of counsel does not survive her guilty plea because "[t]here is no showing that the plea bargaining process was infected by [the] allegedly ineffective assistance or that defendant entered the plea because of [her] attorney['s] allegedly poor performance" (*People v Robinson*, 39 AD3d 1266, 1267, lv denied 9 NY3d 869 [internal quotation marks omitted]; see *People v Burke*, 256 AD2d 1244, lv denied 93 NY2d 851). In any event, that contention concerns matters outside the record and thus must be raised by way of a motion pursuant to CPL article 440 (see *People v Williams*, 48 AD3d 1108, 1109, lv denied 10 NY3d 872; *People v Jackson*, 4 AD3d 773, lv denied 2 NY3d 801). Finally, the sentence is not unduly harsh or severe.

Entered: February 6, 2009

JoAnn M. Wahl  
Clerk of the Court