

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

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KA 05-00667

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TIMOTHY S. JONES, DEFENDANT-APPELLANT.

RICHARD W. YOUNGMAN, CONFLICT DEFENDER, ROCHESTER, FOR
DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (KELLY CHRISTINE
WOLFORD OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Richard A. Keenan, J.), rendered December 3, 2004. The judgment convicted defendant, upon his plea of guilty, of murder in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of murder in the second degree (Penal Law § 125.25 [2]), defendant contends that his plea was not knowingly, intelligently and voluntarily entered. We reject that contention (see *People v Alexander*, 185 AD2d 712, lv denied 80 NY2d 926). In fact, the record belies the contention of defendant that County Court accepted his guilty plea despite an unresolved issue concerning his competency. There is nothing in the record before us to indicate that the court should have questioned the competency of defendant at the time he withdrew his motion pursuant to CPL article 730 and entered his plea (see generally *People v Francabandera*, 33 NY2d 429, 438-439; *People v Sims*, 217 AD2d 912, 912-913, lv denied 87 NY2d 851). We have reviewed defendant's remaining contentions and conclude that none requires reversal.

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court