

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

438

**KA 07-01045**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES BUSCH, JR., DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KAREN RUSSO-MCLAUGHLIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (J. MICHAEL MARION OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (Christopher J. Burns, J.), rendered April 30, 2007. The judgment convicted defendant, upon his plea of guilty, of manslaughter in the first 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 manslaughter in the first degree (Penal Law § 125.20 [1]). To the extent that defendant challenges the factual sufficiency of his plea allocution, that challenge is encompassed by his valid waiver of the right to appeal (*see People v Morgan*, \_\_\_ AD3d \_\_\_ [Feb. 6, 2009]; *People v Phillips*, 56 AD3d 1163, 1164; *People v Spikes*, 28 AD3d 1101, 1102, *lv denied* 7 NY3d 818). Although the further contention of defendant that his plea was involuntary survives his waiver of the right to appeal (*see People v Seaberg*, 74 NY2d 1, 10; *People v Elardo*, 52 AD3d 1272, *lv denied* 11 NY3d 787, 788), defendant failed to preserve that contention for our review (*see People v Neal*, 56 AD3d 1211; *People v Collins*, 45 AD3d 1472, *lv denied* 10 NY3d 861). This case does not fall within the narrow exception to the preservation requirement (*see People v Lopez*, 71 NY2d 662, 666; *Neal*, 56 AD3d 1211; *People v Sharp*, 56 AD3d 1230, *lv denied* 11 NY3d 900).

Entered: March 20, 2009

JoAnn M. Wahl  
Clerk of the Court