

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

605

KA 04-01401

PRESENT: HURLBUTT, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARRELL W. ADAMS, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (ROBERT P. RICKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

DARRELL W. ADAMS, DEFENDANT-APPELLANT PRO SE.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (William D. Walsh, J.), rendered June 8, 2004. The judgment convicted defendant, upon a jury verdict, 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 a jury verdict of murder in the second degree (Penal Law § 125.25 [1]), defendant contends in his main and pro se supplemental briefs that he was denied a fair trial by prosecutorial misconduct. Defendant failed to preserve that contention for our review and, in any event, the alleged instances of misconduct did not result in substantial prejudice to defendant such that he was denied a fair trial (see *People v Russell*, 50 AD3d 1569, 1570, lv denied 10 NY3d 939; *People v Wilson*, 34 AD3d 1276, lv denied 8 NY3d 886). Defendant also failed to preserve for our review the contention in his main brief that County Court abused its discretion in failing to appoint standby counsel to assist him in his pro se capacity at trial (see CPL 470.05 [2]). In any event, that contention is also without merit. A defendant does not have the right to the assistance of an attorney while proceeding pro se (see *People v Mirenda*, 57 NY2d 261, 264), and it cannot be said that the court's failure to appoint standby counsel was an abuse of discretion (see *id.* at 266; *People v Bedard*, 265 AD2d 886, lv denied 94 NY2d 860).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court