

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

1009

**KA 05-01142**

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, PINE, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TYRONE PRESCOTT, DEFENDANT-APPELLANT.

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THOMAS J. EOANNOU, BUFFALO (JEREMY D. SCHWARTZ OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), rendered March 7, 2005. The judgment convicted defendant, upon a nonjury verdict, of gang assault in the first degree and assault 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, after a nonjury trial, of gang assault in the first degree (Penal Law § 120.07) and assault in the first degree (§ 120.10 [1]). Viewing the evidence in light of the elements of those crimes (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495). " 'The credibility determinations of [Supreme] Court are entitled to great deference . . . , and there is no basis to conclude that the court failed to give the evidence the weight that it should be accorded' " (*People v Woodworth*, 8 AD3d 1010, 1011, *lv denied* 3 NY3d 683; *see People v Burton*, 38 AD3d 1290, *amended on rearg* 41 AD3d 1325). Even assuming, arguendo, that defendant has preserved for our review his contentions concerning the sentencing procedures, we reject those contentions and conclude that he was not denied due process at sentencing (*see generally People v Perry*, 36 NY2d 114, 119). "The standard for determining whether a sentencing has been fairly conducted 'is whether the defendant has been afforded an opportunity to refute those aggravating factors which may have negatively influenced the court' " (*People v Seplow*, 226 AD2d 178, 179, *lv denied* 88 NY2d 969, quoting *Perry*, 36 NY2d at 119; *see People v Dimmick*, 53 AD3d 1113, *lv denied* 11 NY3d 831; *People v Massmann*, 13

AD3d 808, 809). Here, defendant was afforded that opportunity.

Entered: October 2, 2009

Patricia L. Morgan  
Clerk of the Court