

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

1170

KA 07-02596

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, PERADOTTO, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JIMMY VELASQUEZ, ALSO KNOWN AS JOSE COLON,
DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (VINCENT F. GUGINO OF
COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), rendered January 26, 2007. The judgment convicted defendant, upon his plea of guilty, of attempted burglary in the second 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 attempted burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]). We reject the contention of defendant that Supreme Court erred in denying his repeated requests for substitution of assigned counsel. "Defendant did not indicate that there was 'a serious possibility of good cause for substitution' but, rather, made only vague assertions that defense counsel was not in frequent contact with him and did not aid in his defense" (*People v MacLean*, 48 AD3d 1215, 1217, *lv denied* 10 NY3d 866, 11 NY3d 790; see *People v Sides*, 75 NY2d 822, 824). Contrary to the further contention of defendant, the court properly sentenced him as a persistent violent felony offender (see *People v Thomas*, 56 AD3d 1240, *lv denied* 12 NY3d 763).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court