

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

177

KA 08-02219

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ALJUAN GREEN, DEFENDANT-APPELLANT.

TYSON BLUE, MACEDON, FOR DEFENDANT-APPELLANT.

RICHARD M. HEALY, DISTRICT ATTORNEY, LYONS (CHRISTOPHER BOKELMAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wayne County Court (John B. Nesbitt, J.), rendered September 9, 2008. The judgment convicted defendant, upon his plea of guilty, of assault 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 assault in the second degree (Penal Law § 120.05 [2]), defendant contends that County Court erred in refusing to suppress the identification testimony of the victim. We reject that contention. At the hearing conducted pursuant to *People v Rodriguez* (79 NY2d 445), the People established that the victim had sufficient familiarity with defendant that his identification of defendant from a single photograph was merely confirmatory (see *People v Jacobs*, 65 AD3d 594, 595, lv denied 13 NY3d 836; *People v Lathrop*, 242 AD2d 876, lv denied 91 NY2d 894). Defendant failed to preserve for our review his further contention that the court erred in accepting his plea after he expressed dissatisfaction with defense counsel and misgivings with respect to the plea, and "this case does not qualify for the narrow, rare exception to the requirement that the claim of an invalid guilty plea must be appropriately preserved" (*People v Clarke*, 93 NY2d 904, 906).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court