

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

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KA 06-03804

PRESENT: SMITH, J.P., CARNI, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL S. MORGAN, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (MATTHEW J. CLARK OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL S. MORGAN, DEFENDANT-APPELLANT PRO SE.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY A. GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Alex R. Renzi, J.), rendered November 15, 2006. The judgment convicted defendant, upon a jury verdict, of course of sexual conduct against a child in the first degree and endangering the welfare of a child (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of course of sexual conduct against a child in the first degree (Penal Law § 130.75 [1] [a]) and two counts of endangering the welfare of a child (§ 260.10 [1]). We reject the contention of defendant that County Court erred in denying his request to represent himself. "The request to represent oneself must be invoked clearly and unequivocally" (*People v LaValle*, 3 NY3d 88, 106; see *People v McIntyre*, 36 NY2d 10, 17). Here, however, the sole request by defendant to represent himself was equivocal because he made that request "as a way of obtaining the dismissal of . . . assigned counsel. [Indeed,] defendant's . . . request[] to proceed pro se [was] made in the alternative[inasmuch as] he sought to represent himself only because [the c]ourt refused to replace . . . assigned counsel[,] who had displeased him" (*People v Gillian*, 8 NY3d 85, 88). Consequently, viewing defendant's request in its immediate context and in light of the record before us, we cannot conclude that defendant made an unequivocal request to proceed pro se (see *id.*; *LaValle*, 3 NY3d at 106).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court