

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

713

KA 08-01142

PRESENT: MARTOCHE, J.P., SMITH, CENTRA, SCONIERS, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT E. ANTHONY, DEFENDANT-APPELLANT.

ROBERT L. GOSPER, CANANDAIGUA, FOR DEFENDANT-APPELLANT.

ROBERT E. ANTHONY, DEFENDANT-APPELLANT PRO SE.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JAMES B. RITTS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Craig J. Doran, J.), rendered May 19, 2008. The judgment convicted defendant, upon a jury verdict, of burglary in the first degree (two counts), assault in the first degree and criminal possession of a weapon in the third degree.

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, inter alia, two counts of burglary in the first degree (Penal Law § 140.30 [2], [3]). By failing to object to County Court's ultimate *Sandoval* ruling, defendant failed to preserve for our review his contention that the ruling constitutes an improvident exercise of discretion (see *People v Walker*, 66 AD3d 1331, lv denied 13 NY3d 942). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]).

We reject the further contention of defendant that he was denied effective assistance of counsel. Viewing the evidence, the law, and the circumstances of this case in totality and as of the time of the representation, we conclude that defendant received meaningful representation (see generally *People v Baldi*, 54 NY2d 137, 147; *People v Workman*, 277 AD2d 1029, 1032, lv denied 96 NY2d 764).

Contrary to defendant's contention, the evidence is legally sufficient to support the conviction (see generally *People v Bleakley*, 69 NY2d 490, 495). Viewing the evidence in light of the elements of the crimes as charged to the jury (see *People v Danielson*, 9 NY3d 342, 349), we reject defendant's further contention that the verdict is

against the weight of the evidence (*see generally Bleakley*, 69 NY2d at 495). Finally, the sentence is not unduly harsh or severe.

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court