

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

996

KA 09-01554

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARLIN J. HOUSE, DEFENDANT-APPELLANT.

RONALD C. VALENTINE, PUBLIC DEFENDER, LYONS (DAVID M. PARKS OF COUNSEL), FOR DEFENDANT-APPELLANT.

RICHARD M. HEALY, DISTRICT ATTORNEY, LYONS (JACQUELINE MCCORMICK OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wayne County Court (Stephen R. Sirkin, J.), rendered November 21, 2008. The judgment convicted defendant, upon his plea of guilty, of attempted assault 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 assault in the second degree (Penal Law §§ 110.00, 120.05 [3]). Contrary to the contention of defendant, we conclude that County Court properly denied his motion to withdraw the plea. The record of the plea colloquy establishes that the factual allocution was sufficient and that defendant's plea was voluntarily, knowingly and intelligently entered (*see People v Vogler*, 156 AD2d 932, *lv denied* 75 NY2d 872). We reject the further contention of defendant that he was improperly sentenced as a second felony offender. The record establishes that the court complied with CPL 400.21 (3) by asking defendant whether he wished to controvert any allegation in the People's predicate felony statement, and that defendant responded by admitting that the contents thereof were accurate.

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court