

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

1127

KA 09-01437

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID PLUNKETT, DEFENDANT-APPELLANT.

AUDREY BARON DUNNING, ILION, FOR DEFENDANT-APPELLANT.

JOHN H. CRANDALL, SR., DISTRICT ATTORNEY, HERKIMER (JACQUELYN M. ASNOE OF COUNSEL), FOR RESPONDENT.

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., NEW YORK CITY (BEBE J. ANDERSON OF COUNSEL), FOR AMERICAN ACADEMY OF HIV MEDICINE ASSOCIATION OF NURSES IN AIDS CARE, HIV MEDICINE ASSOCIATION, AND LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., AMICI CURIAE.

Appeal from a judgment of the Herkimer County Court (Patrick L. Kirk, J.), rendered May 23, 2007. The judgment convicted defendant, upon his plea of guilty, of aggravated assault on a police officer or a peace officer and assault in the second degree (two counts).

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 one count of aggravated assault upon a police officer or a peace officer (Penal Law § 120.11) and two counts of assault in the second degree (§ 120.05 [3]). By pleading guilty, defendant forfeited his contention that County Court erred in refusing to dismiss the indictment based upon the prosecutor's alleged failure to introduce exculpatory evidence before the grand jury (*see People v Crumpler*, 70 AD3d 1396, 1397, *lv denied* 14 NY3d 839), as well as his contention concerning the alleged insufficiency of the evidence presented to the grand jury (*see People v Dickerson*, 66 AD3d 1371, 1372-1373, *lv denied* 13 NY3d 859). In addition, defendant forfeited his contention that the court improperly curtailed defense counsel's questioning of prospective jurors concerning their views on mental illness because, "[b]y pleading guilty instead of going to trial, the defendant . . . necessarily surrendered his right to challenge on appeal any alleged trial errors" (*People v Green*, 75 NY2d 902, 904-

905, *cert denied* 498 US 860).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court