

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

1356

KA 08-02630

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, LINDLEY, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANTHONY MORRIS, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KAREN RUSSO-MCLAUGHLIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (J. MICHAEL MARION OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael F. Pietruszka, J.), rendered October 30, 2008. The judgment convicted defendant, upon his plea of guilty, of attempted burglary 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 attempted burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]), defendant contends that County Court abused its discretion in denying his motion to withdraw his plea. We reject that contention (*see generally People v Howell*, 60 AD3d 1347). The plea colloquy was not rendered factually insufficient by defendant's monosyllabic responses to questioning by the court (*see People v VanDeViver*, 56 AD3d 1118, *lv denied* 11 NY3d 931, 12 NY3d 788; *People v Wilson*, 38 AD3d 1348, *lv denied* 9 NY3d 927), and we conclude that the record otherwise establishes that the plea was knowing, voluntary and intelligent (*see People v Guzman*, 70 AD3d 1332; *People v Spikes*, 28 AD3d 1101, 1102, *lv denied* 7 NY3d 818). Indeed, the contention of defendant that his plea was coerced by defense counsel is belied by the record (*see People v Montgomery*, 63 AD3d 1635, 1636, *lv denied* 13 NY3d 798; *People v Gimenez*, 59 AD3d 1088, 1089, *lv denied* 12 NY3d 816). In addition, defendant failed to submit any new evidence to substantiate his conclusory assertions of innocence in support of his motion to withdraw the plea (*see Guzman*, 70 AD3d 1332; *People v Kimmons*, 39 AD3d 1180). Thus, contrary to the contention of defendant, he made no showing of entitlement to an evidentiary hearing on his motion, and we note in any event that "[o]nly in the rare instance will a defendant be entitled to an evidentiary hearing"

(*People v Tinsley*, 35 NY2d 926, 927; see *Kimmons*, 39 AD3d at 1180).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court