

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

1417

KA 09-02370

PRESENT: SCUDDER, P.J., MARTOCHE, GREEN, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NAKIESHA JONES, DEFENDANT-APPELLANT.

LOUIS ROSADO, BUFFALO, FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHELLE L. CIANCIOSA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Shirley Troutman, J.), rendered November 5, 2009. The judgment convicted defendant, upon a jury verdict, of petit larceny and criminal possession of stolen property in the fifth degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed and the matter is remitted to Erie County Court for proceedings pursuant to CPL 460.50 (5).

Memorandum: On appeal from a judgment convicting her upon a jury verdict of petit larceny (Penal Law § 155.25) and criminal possession of stolen property in the fifth degree (§ 165.40), defendant contends that her right to counsel was impaired by County Court's denial of her requests for substitution of counsel. The record establishes that defendant withdrew those requests and agreed to proceed with assigned counsel, and we thus conclude that she waived her present contention (*see People v Hernandez*, 62 AD3d 401, *lv denied* 13 NY3d 797). Defendant also waived her present contention that the court erred in denying her the right to proceed pro se, inasmuch as the record establishes that she withdrew her request to represent herself (*see People v McRae*, 284 AD2d 657, *lv denied* 96 NY2d 921). We reject the further contention of defendant that defense counsel was ineffective in requesting that the court submit lesser included offenses to the jury (*see People v Taylor*, 2 AD3d 1306, 1308; *see generally People v Colville*, ___ AD3d ___, ___ [Oct. 5, 2010]), and in failing to seek dismissal of the indictment pursuant to CPL 190.50 and 210.40 (*see generally People v Marcial*, 41 AD3d 1308, *lv denied* 9 NY3d 878). Finally, under the circumstances of this case, the court did not abuse its discretion in denying defendant's request for a missing evidence charge based upon the failure of the People to preserve the stolen

merchandise (*see People v Pfahler*, 179 AD2d 1062, 1063).

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court