

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

**1468**

**KA 09-01468**

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, PERADOTTO, AND GREEN, JJ.

---

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEVIN ANDERSON, ALSO KNOWN AS AKIM NELSON,  
DEFENDANT-APPELLANT.

---

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (JOHN PATRICK  
FEROLETO OF COUNSEL), FOR RESPONDENT.

---

Appeal from a judgment of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), rendered June 22, 2009. The judgment convicted defendant, upon a jury verdict, of murder in the second degree (two counts), attempted robbery in the first degree (two counts) and criminal possession of a weapon in the fourth 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 murder in the second degree (Penal Law § 125.25 [1], [3]). Defendant failed to preserve for our review his contention that the conviction is not supported by legally sufficient evidence (*see People v Gray*, 86 NY2d 10, 19; *People v Townsley*, 50 AD3d 1610, lv denied 11 NY3d 742). 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 People v Bleakley*, 69 NY2d 490, 495). Contrary to the contention of defendant, we conclude that he received effective assistance of counsel (*see People v McDaniel*, 13 NY3d 751; *People v Forsythe*, 59 AD3d 1121, 1123-1124, lv denied 12 NY3d 816; *see generally People v Baldi*, 54 NY2d 137, 147).

The sentence is not unduly harsh or severe. We note, however, that the certificate of conviction incorrectly reflects that defendant was convicted of two counts of attempted robbery in the first degree under Penal Law §§ 110.00, 160.15 (4), and it must therefore be amended to reflect that he was convicted of one count of attempted robbery in the first degree under Penal Law §§ 110.00, 160.15 (1) and one count of attempted robbery in the first degree under Penal Law §§

110.00, 160.15 (4) (see *People v Martinez*, 37 AD3d 1099, lv denied 8 NY3d 947; *People v Benson*, 265 AD2d 814, 816, lv denied 94 NY2d 860, cert denied 529 US 1076).

Entered: December 30, 2010

Patricia L. Morgan  
Clerk of the Court