

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

1120

KA 10-02300

PRESENT: SCUDDER, P.J., SMITH, FAHEY, CARNI, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSE MARTINEZ, ALSO KNOWN AS "GORDO,"
DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KRISTIN M. PREVE OF
COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (DONNA A. MILLING OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered March 24, 2009. The judgment convicted defendant, upon his plea of guilty, of attempted murder in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from three judgments convicting him upon his plea of guilty of, respectively, attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]), criminal possession of a weapon in the second degree (§ 265.03 [1] [b]), and assault in the second degree (§ 120.05 [2]). We note that the plea was entered in satisfaction of three separate indictments. Contrary to defendant's contention, the record establishes that he knowingly, voluntarily and intelligently waived the right to appeal (see generally *People v Lopez*, 6 NY3d 248, 256), and the valid waiver forecloses his challenge to the severity of the sentence in each appeal (see *id.* at 255).

Entered: November 9, 2012

Frances E. Cafarell
Clerk of the Court