

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

1251

KA 12-01819

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID O. NEIL, DEFENDANT-APPELLANT.

KATHLEEN P. REARDON, ROCHESTER, FOR DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JOHN C. TUNNEY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Marianne Furfure, A.J.), rendered September 26, 2011. The judgment convicted defendant, upon his guilty plea, of attempted arson in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him, upon his guilty plea, of attempted arson in the second degree (Penal Law §§ 110.00, 150.15). Even assuming, arguendo, that defendant's challenge to the factual sufficiency of the plea allocution has been preserved for our review (see generally *People v Lopez*, 71 NY2d 662, 665), we conclude that defendant's challenge lacks merit. Defendant "pleaded guilty to a crime lesser than that charged in the indictment," and thus no factual colloquy was required (*People v Richards*, 93 AD3d 1240, 1240, *lv denied* 20 NY3d 1014). Defendant further contends that he was denied effective assistance of counsel because defense counsel did not explore or address a possible defense of intoxication. Although defendant's contention "survives his guilty plea . . . to the extent that [he] contends that his plea was infected by the alleged ineffective assistance," we conclude that defendant received meaningful representation inasmuch as he received "an advantageous plea and nothing in the record casts doubt on the apparent effectiveness of counsel" (*People v Nieves*, 299 AD2d 888, 889, *lv denied* 99 NY2d 631 [internal quotation marks omitted]; see *People v Campbell*, 106 AD3d 1507, 1508, *lv denied* 21 NY3d 1002).

Entered: December 27, 2013

Frances E. Cafarell
Clerk of the Court