

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D27043
O/kmg

_____AD3d_____

Submitted - April 7, 2010

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-11239

DECISION & ORDER

The People, etc., respondent,
v Andrew Sumahit, appellant.

(Ind. No. 66/08)

Salvatore C. Adamo, New York, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Dolan, J.), rendered November 6, 2008, convicting him of gang assault in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

Since the defendant failed to move to withdraw his plea, his contention that his plea was not knowingly, voluntarily, and intelligently entered is unreserved for appellate review (*see* CPL 470.05[2]; *People v Antoine*, 59 AD3d 560; *People v Castilo-Cordero*, 54 AD3d 1054; *People v Bevins*, 27 AD3d 572; *People v Martin*, 7 AD3d 640). In any event, his plea of guilty was knowingly, voluntarily, and intelligently entered (*see People v Fiumefreddo*, 82 NY2d 536, 543; *People v Callahan*, 80 NY2d 273, 283; *People v Moissett*, 76 NY2d 909, 910-911; *People v Harris*, 61 NY2d 9, 16; *People v Nixon*, 21 NY2d 338, *cert denied* 393 US 1067).

To the extent that the defendant's contentions regarding any alleged ineffective assistance of counsel rest on matter outside the record, they are not reviewable on direct appeal (*see*

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People v Ali, 55 AD3d 919; *People v Drago*, 50 AD3d 920). Insofar as the contentions are reviewable, we find that the defendant received meaningful representation (*see People v Drago*, 50 AD3d 920; *People v Brooks*, 36 AD3d 929, 930; *People v Grimes*, 35 AD3d 882, 883).

Since the defendant pleaded guilty with the understanding that he would receive the sentence which was thereafter actually imposed, he has no basis to now complain that his sentence was excessive (*see People v De Alvarez*, 59 AD3d 732; *People v Fanelli*, 8 AD3d 296; *People v Mejia*, 6 AD3d 630, 631; *People v Kazepis*, 101 AD2d 816. In any event, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

MASTRO, J.P., SANTUCCI, DICKERSON, BELEN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court