

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

D28489
H/prt

_____AD3d_____

Submitted - September 14, 2010

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2007-10474

DECISION & ORDER

The People, etc., respondent,
v Jermaine McLean, appellant.

(Ind. No. 3012/06)

Steven Banks, New York, N.Y. (Ellen Dille of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Sharon Y. Brodt of counsel; Lorrie A. Zinno on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Cooperman, J.), rendered November 7, 2007, convicting him of burglary in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim with respect to the voluntariness of the plea survives even a valid waiver of the right to appeal (*see People v Rodriguez-Ovalles*, 74 AD3d 1368; *People v Elcine*, 43 AD3d 1176, 1177). However, the record of the plea proceeding establishes that the defendant's plea of guilty was knowingly, intelligently, and voluntarily entered (*see People v Garcia*, 92 NY2d 869, 870; *People v Fiumefreddo*, 82 NY2d 536, 543; *People v Grimes*, 35 AD3d 882, 883). Accordingly, the Supreme Court providently exercised its discretion in denying the defendant's pro se motion to withdraw his plea of guilty (*see CPL 220.60*[3]; *People v DeLeon*, 40 AD3d 1008,

October 5, 2010

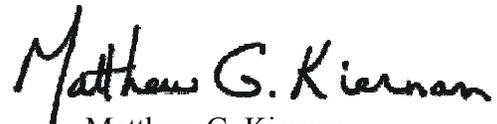
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1008-1009; *People v Gully*, 17 AD3d 382).

RIVERA, J.P., DICKERSON, ENG and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court