

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

D28545
Y/nl

_____AD3d_____

Submitted - September 22, 2010

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL
LEONARD B. AUSTIN, JJ.

2009-06139

DECISION & ORDER

The People, etc., respondent,
v Duane Kirby, appellant.

(Ind. No. 08-00430)

Janet Gandolfo, Sleepy Hollow, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Robert H. Middlemiss of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Freehill, J.), rendered June 1, 2009, convicting him of burglary in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contentions, a review of the minutes of the plea proceedings clearly demonstrates that his plea of guilty was voluntarily, intelligently, and knowingly made (*see People v Fiumefreddo*, 82 NY2d 536, 543; *People v Callahan*, 80 NY2d 273, 283; *People v Moissett*, 76 NY2d 909, 910-111; *People v Harris*, 61 NY2d 9, 16; *People v Nixon*, 21 NY2d 338, *cert denied sub nom. Robinson v New York*, 393 US 1067). Accordingly, the County Court providently exercised its discretion in denying the defendant's motion to withdraw his plea of guilty (*see People v Seeber*, 4 NY3d 780; *People v Mann*, 32 AD3d 865; *People v Kucharczyk*, 15 AD3d

595). Moreover, in light of the record herein, the defendant was not deprived of the effective assistance of counsel (see *People v Ford*, 86 NY2d 397, 404; *People v Brooks*, 36 AD3d 929, 930; *People v Sherrill*, 27 AD3d 588, 588; *People v Weekes*, 289 AD2d 599, 599; *People v Clark*, 254 AD2d 299; *People v Boodhoo*, 191 AD2d 448).

RIVERA, J.P., COVELLO, ENG, LEVENTHAL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court