

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

D29266
W/hu

_____AD3d_____

Submitted - October 6, 2010

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

2009-08851

DECISION & ORDER

The People, etc., respondent,
v Huygens Merard, appellant.

(Ind. No. 09-00003)

Michael G. Paul, New City, N.Y., for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Itamar J. Yeger of counsel;
Akiva Schonfeld on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Alfieri, J.), rendered August 17, 2009, convicting him of rape in the second degree, criminal sexual act in the second degree, and endangering the welfare of a child, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that his plea of guilty was not knowingly, voluntarily, and intelligently made is unpreserved for appellate review since he did not move to withdraw his plea on that ground (*see* CPL 470.05[2]; *People v Toxey*, 86 NY2d 725, 726; *People v Trent*, 74 AD3d 1370; *People v LeGrady*, 50 AD3d 1059; *People v Jaeger*, 227 AD2d 501). In any event, his contention that he was coerced into pleading guilty because he did not have adequate time to consult with counsel and his family is belied by the record, and is contrary to his express representations at the plea proceeding (*see People v Oyague*, 237 AD2d 311; *People v Sampson*, 156 AD2d 492, 493; *People v Riley*, 120 AD2d 752).

November 30, 2010

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The defendant cannot complain that the sentence imposed was excessive (*see People v Kazepis*, 101 AD2d 816, 817), as the sentence imposed was less than that which was promised.

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