

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

D30523
H/kmb

_____AD3d_____

Submitted - March 9, 2011

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RANDALL T. ENG
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2010-00272

DECISION & ORDER

The People, etc., respondent,
v Jason Batista, appellant.

(Ind. No. 09-00074)

Arleen Lewis, Blauvelt, N.Y., for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Rockland County (Kelly, J.), rendered December 9, 2009, convicting him of assault in the second degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The Supreme Court's failure, sua sponte, to direct a competency hearing pursuant to CPL article 730 does not require reversal. A defendant is presumed to be competent, and there is no basis in the record to conclude that at the time the defendant entered his plea of guilty, he lacked the capacity to understand the proceedings against him or was unable to assist in his defense (*see* CPL 730.10[1]; *People v Morgan*, 87 NY2d 878, 880; *People v Gensler*, 72 NY2d 239, 243-246, *cert denied* 488 US 932; *People v Shaffer*, _____AD3d_____, 2011 NY Slip Op 01511 [2d Dept 2011]; *People v Gallo*, 73 AD3d 804; *People v M'Lady*, 59 AD3d 568; *People v Monk*, 29 AD3d 605). The mere existence of a notation in the presentence report that the defendant, approximately 10 years earlier, had been diagnosed as emotionally and learning disabled, does not, without more, trigger a duty to inquire as to his competency (*see People v Kessler*, 5 AD3d 504, 505; *People v*

March 22, 2011

PEOPLE v BATISTA, JASON

Page 1.

Hansen, 269 AD2d 467, 468; *People v Hollis*, 204 AD2d 569). Furthermore, the responses made by the defendant at the plea and sentencing proceedings were appropriate and did not indicate that he was incapacitated (see *People v Gallo*, 73 AD3d 804; *People v M'Lady*, 59 AD3d 568; *People v Pryor*, 11 AD3d 565).

SKELOS, J.P., COVELLO, ENG, CHAMBERS and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court