

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

D30576  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - February 25, 2011

WILLIAM F. MASTRO, J.P.  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

---

2009-04282

DECISION & ORDER

The People, etc., respondent,  
v Alan DeCarlo, appellant.

(Ind. No. 65/08)

---

Arza Feldman, Uniondale, N.Y. (Steven A. Feldman of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Joan H. McCarthy of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered April 6, 2009, convicting him of course of sexual conduct against a child in the second degree, criminal sexual act in the third degree, and endangering the welfare of a child, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of his right to effective assistance of counsel is, in part, based on matter dehors the record and to that extent, it may not be reviewed on direct appeal (*see People v Ramos*, 77 AD3d 773). Insofar as the record permits review of the claim, we find that defense counsel provided meaningful representation (*see People v Turner*, 5 NY3d 476, 480; *People v Baldi*, 54 NY2d 137, 147).

The defendant's claim that his conviction of criminal sexual act in the third degree was not supported by legally sufficient evidence is not preserved for appellate review (*see CPL 470.05[2]*; *People v Hawkins*, 11 NY3d 484, 492; *People v Martin*, 48 AD3d 701, 702). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we

March 29, 2011

PEOPLE v DeCARLO, ALAN

Page 1.

find that it was legally sufficient to establish the defendant's guilt of criminal sexual act in the third degree beyond a reasonable doubt. Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342, 348-349), we nevertheless accord great deference to the factfinder's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633, 634-635).

MASTRO, J.P., CHAMBERS, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan  
Clerk of the Court