

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

D32349
H/prt

_____AD3d_____

Argued - September 8, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2009-02613

DECISION & ORDER

The People, etc., respondent,
v Alfonso Padgett, appellant.

(Ind. No. 662/08)

Lynn W. L. Fahey, New York, N.Y. (Leila Hull of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Sharon Y. Brodt, and Roni C. Piplani of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Blumenfeld, J.), rendered February 17, 2009, convicting him of burglary in the third degree, after a nonjury trial, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of the effective assistance of counsel by virtue of his attorney's failure to make a certain argument in support of that branch of the defendant's omnibus motion which was to suppress physical evidence is without merit. Defense counsel's argument that the physical evidence did not belong to the defendant—rather than pursuing the argument that the physical evidence belonged to the defendant but should be suppressed because the police lacked reasonable suspicion to detain him—was a legitimate trial tactic and, thus, constituted meaningful representation (*see People v Baldi*, 54 NY2d 137, 146). In any event, counsel cannot be held ineffective for “fail[ing] to make a motion or argument that has little or no chance of success” (*People v Caban*, 5 NY3d 143, 152 [internal quotation marks omitted]; *see People v Kurth*, 82 AD3d 905, 906), and any argument that the police lacked reasonable suspicion to detain

the defendant would likely have failed because ample evidence existed that the police had reasonable suspicion to believe that the defendant was committing a crime.

The defendant's further contention that he was deprived of the effective assistance of counsel by virtue of his attorney's failure to request that the Supreme Court consider the lesser-included offense of criminal trespass in the third degree is also without merit. The alleged failure appears to have been part of defense counsel's legitimate trial strategy, and the defendant failed to "demonstrate the absence of strategic or other legitimate explanations for counsel's [supposed] failure[s]" (*People v Windley*, 70 AD3d 1060, 1061, quoting *People v Taylor*, 1 NY3d 174, 176 [internal quotation marks omitted]; see *People v Ryan*, 90 NY2d 822, 823-824; *People v Baldi*, 54 NY2d at 151).

RIVERA, J.P., FLORIO, LEVENTHAL and ROMAN, 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