

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

D32469

Y/prt

_____AD3d_____

Submitted - June 20, 2011

MARK C. DILLON, J.P.
RANDALL T. ENG
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2008-10181

DECISION & ORDER

The People, etc., respondent,
v Claudio Marino-Affaitati, appellant.

(Ind. No. 156/08)

Franzblau Dratch, New York, N.Y. (Stephen N. Dratch of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered October 21, 2008, convicting him of conspiracy in the fourth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The record reflects that the defendant's plea was knowing, voluntary, and intelligent (*see People v Seeber*, 4 NY3d 780; *People v Fiumefreddo*, 82 NY2d 536; *People v Lopez*, 71 NY2d 662). His contention that the allocution was insufficient because the County Court failed to ascertain his intent to cause serious physical injury is without merit (*see People v Fiumefreddo*, 82 NY2d 536).

To the extent the defendant contends that his counsel provided ineffective assistance for failing to inform him of a potential entrapment defense, this contention involves matter dehors the record and is not reviewable on direct appeal (*see People v Rivera*, 71 NY2d 705, 709; *People v Redmon*, 81 AD3d 752; *People v Johnson*, 59 AD3d 738). To the extent this contention is

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reviewable on the record before us, the defendant's plea allocution, in which he admitted that he had "made arrangements" with an individual to injure the defendant's wife, demonstrates the absence of inducement or encouragement to commit the crime, a necessary element of an entrapment defense (see Penal Law §§ 25.00, 40.05; *People v Brown*, 82 NY2d 869, 871).

DILLON, J.P., ENG, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court