

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

D32770
H/prt

_____AD3d_____

Submitted - October 19, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
RANDALL T. ENG
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-09403

DECISION & ORDER

The People, etc., respondent,
v Efrain Hernandez-Bautista, appellant.

(Ind. No. 157/10)

Salvatore C. Adamo, New York, N.Y., 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 (Dolan, J.), rendered July 29, 2010, convicting him of rape in the first degree, 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 prior to sentencing (*see* CPL 470.05[2]; *People v Gantt*, 85 AD3d 815, 816). In any event, his plea was knowingly, voluntarily, and intelligently made (*see People v Fiumefreddo*, 82 NY2d 536, 543).

The defendant's contention that he was deprived of the effective assistance of counsel is without merit (*see People v Ford*, 86 NY2d 397, 404).

November 1, 2011

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80; *cf. People v Kazepis*, 101 AD2d 816, 817).

RIVERA, J.P., FLORIO, ENG, HALL and COHEN, 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