

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1006

KA 08-01751

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES H. POWLESS, DEFENDANT-APPELLANT.

DAVID J. PAJAK, ALDEN, FOR DEFENDANT-APPELLANT.

JAMES H. POWLESS, DEFENDANT-APPELLANT PRO SE.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered June 2, 2008. The judgment convicted defendant, upon his plea of guilty, of sodomy in the first degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his guilty plea of two counts of sodomy in the first degree (Penal Law former § 130.50 [1]). A guilty plea "generally results in a forfeiture of the right to appellate review of any nonjurisdictional defects in the proceedings" (*People v Fernandez*, 67 NY2d 686, 688). Although "CPL 710.70 (2) carves out a limited exception providing that an order finally denying a motion to suppress evidence may be reviewed on appeal from a final judgment of conviction, even one entered upon a guilty plea," that exception does not apply here because defendant pleaded guilty before County Court issued a suppression ruling, let alone a final suppression order (*id.*; see *People v Graham*, 42 AD3d 933, 933-934, *lv denied* 9 NY3d 876). We have considered the remaining contentions of defendant in his pro se supplemental brief and conclude that they are without merit.

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court