

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

662

**KA 07-01128**

PRESENT: SMITH, J.P., CARNI, SCONIERS, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JULIO R. NUNEZ, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID M. ABBATOY, JR., OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY A. GILLIGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Alex R. Renzi, J.), rendered April 18, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a controlled substance in the first degree (Penal Law § 220.21 [1]). We reject the contention of defendant that County Court erred in failing to address his requests to proceed pro se. "Defendant never made an unequivocal invocation of his right of self-representation[] because each of his requests to proceed pro se was made in the context of a request for substitution of counsel" (*People v McClam*, 297 AD2d 514, 514, lv denied 99 NY2d 537; see also *People v Caswell*, 56 AD3d 1300, 1301-1302, lv denied 11 NY3d 923, 12 NY3d 781; see generally *People v Gillian*, 8 NY3d 85, 88).

We conclude that "[d]efendant forfeited the right to our review of [his further] contention[] . . . that the court should have suppressed evidence seized [from his residence] inasmuch as he pleaded guilty before the court determined whether suppression was warranted" (*People v Graham*, 42 AD3d 933, 933-934, lv denied 9 NY3d 876). "A guilty plea 'generally results in a forfeiture of the right to appellate review of any nonjurisdictional defects in the proceedings' " (*People v Powless*, 66 AD3d 1353, quoting *People v Fernandez*, 67 NY2d 686, 688). Although a defendant convicted upon a plea of guilty may seek review of "[a]n order finally denying a motion

to suppress evidence" (CPL 710.70 [2]) upon an appeal from the judgment of conviction, no such order was issued in this case.

Entered: May 7, 2010

Patricia L. Morgan  
Clerk of the Court