

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

1080

**KA 09-01502**

PRESENT: FAHEY, J.P., CARNI, LINDLEY, GREEN, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DALE R. TRACY, DEFENDANT-APPELLANT.

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LINDA M. CAMPBELL, SYRACUSE, FOR DEFENDANT-APPELLANT.

DONALD H. DODD, DISTRICT ATTORNEY, OSWEGO (MICHAEL G. CIANFARANO OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Oswego County Court (Walter W. Hafner, Jr., J.), rendered May 12, 2009. The judgment convicted defendant, upon his plea of guilty, of burglary in the third degree, petit larceny and criminal mischief in the fourth 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 burglary in the third degree (Penal Law § 140.20), petit larceny (§ 155.25) and criminal mischief in the fourth degree (§ 145.00 [1]). We reject the contention of defendant that he was denied effective assistance of counsel. Contrary to the contention of defendant, defense counsel did not make any statements to County Court that were against defendant's interests and thus did not place himself in an adverse position to that of defendant (see *People v Coleman*, 294 AD2d 843). Also contrary to the contention of defendant, he was not denied effective assistance of counsel by defense counsel's incorrect citation to CPL 440.10 rather than CPL 220.60 (3) in support of defendant's motion to withdraw the plea. The incorrect statutory reference is of no moment inasmuch as the record establishes that the court decided the motion on its merits (see generally *People v Baldi*, 54 NY2d 137, 147). Further, the court did not abuse its discretion in denying defendant's motion to vacate the plea (see generally *People v Dozier*, 74 AD3d 1808). Finally, we reject defendant's challenge to the severity of the sentence.

Entered: October 1, 2010

Patricia L. Morgan  
Clerk of the Court