

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

1101

KA 13-01490

PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MATTHEW GOFORTH, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (TIMOTHY P. MURPHY OF COUNSEL), FOR DEFENDANT-APPELLANT.

DONALD G. O'GEEN, DISTRICT ATTORNEY, WARSAW (VINCENT A. HEMMING OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wyoming County Court (Mark H. Dadd, J.), rendered June 10, 2013. The judgment convicted defendant, upon his plea of guilty, of assault in the third 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 assault in the third degree (Penal Law § 120.00 [1]). By pleading guilty, defendant forfeited his contention that County Court should have dismissed the indictment because the prosecutor failed to introduce exculpatory evidence before the grand jury (see *People v Crumpler*, 70 AD3d 1396, 1397, lv denied 14 NY3d 839). Defendant's further contention that he was denied effective assistance of counsel "does not survive his plea of guilty inasmuch as '[t]here is no showing that the plea bargaining process was infected by any allegedly ineffective assistance or that defendant entered the plea because of his attorney['s] allegedly poor performance' " (*People v Fomby*, 42 AD3d 894, 895; see *People v Jackson*, 99 AD3d 1240, 1240, lv denied 20 NY3d 987).

Entered: November 14, 2014

Frances E. Cafarell
Clerk of the Court