

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

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KA 12-00728

PRESENT: SMITH, J.P., CARNI, LINDLEY, VALENTINO, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CURTIS KITCHEN, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (CHRISTINE M. COOK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (VICTORIA M. WHITE OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered March 2, 2012. The judgment convicted defendant, upon his plea of guilty, of grand larceny in the fourth degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of grand larceny in the fourth degree (Penal Law § 155.30 [4]), defendant contends that Supreme Court abused its discretion in denying his motion to withdraw the plea without hearing oral arguments. We reject that contention. We conclude that the court afforded defendant the requisite "reasonable opportunity to present his contentions" when it adjourned the proceedings to afford defense counsel the opportunity to prepare a written motion (*People v Tinsley*, 35 NY2d 926, 927; see *People v Carter-Doucette*, 124 AD3d 1323, 1324; *People v Rossborough*, 105 AD3d 1332, 1333, lv denied 21 NY3d 1045). In the written motion, defendant sought to withdraw his plea on the ground that it was not knowing, voluntary, or intelligent based on his assertions that he did not understand the terms of the plea agreement because of his treatment for depression. Defendant's conclusory and unsubstantiated assertions are not supported by the record and, indeed, they are refuted by his statements made during the plea proceeding (see *People v Adams*, 45 AD3d 1346, 1346; *People v McCawley*, 23 AD3d 1157, 1157, lv denied 6 NY3d 778; *People v McKinnon*, 5 AD3d 1076, 1076-1077, lv denied 2 NY3d 803).

Entered: June 19, 2015

Frances E. Cafarell
Clerk of the Court