

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

244

KA 08-01377

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

IRVIN MAYE, JR., DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHELLE L. CIANCIOSA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), rendered March 31, 2008. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a weapon in the second 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 attempted criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]). Supreme Court properly denied the motion of defendant to withdraw the plea, which was based upon his alleged lack of knowledge at the time of the plea that the victim was unable to identify him. "[D]efendant [was] not entitled to withdraw his . . . plea merely because he discover[ed] that he misapprehended the quality of the [People's] case" (*People v Murdock*, 27 AD3d 1170, 1171 [internal quotation marks omitted]).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court