

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

729

KA 09-00852

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DANIEL DOZIER, 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 (JAMES W. MANSOUR, III, OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Penny M. Wolfgang, J.), rendered February 24, 2009. The judgment convicted defendant, upon his plea of guilty, of attempted murder in the second degree (two counts).

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

Memorandum: Defendant appeals from a judgment convicting him, upon his guilty plea, of two counts of attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]). We reject the contention of defendant that Supreme Court abused its discretion in denying his motion to withdraw his guilty plea inasmuch as the record does not support his assertion that the plea was the product of coercion (see *People v Jones*, 71 AD3d 1573; *People v Spikes*, 28 AD3d 1101, 1102, lv denied 7 NY3d 818). Furthermore, the record "establish[es] that the defendant understood that the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty," and we thus reject defendant's challenge to the validity of the waiver of the right to appeal (*People v Lopez*, 6 NY3d 248, 256). That valid waiver encompasses defendant's challenge to the severity of the sentence (see *id.*).

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court