

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

1569

KA 09-02313

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NATHANIEL MARTIN, DEFENDANT-APPELLANT.

FRANKLIN & GABRIEL, OVID (STEVEN J. GETMAN OF COUNSEL), FOR
DEFENDANT-APPELLANT.

BARRY L. PORSCHE, DISTRICT ATTORNEY, WATERLOO, FOR RESPONDENT.

Appeal from a judgment of the Seneca County Court (Dennis F. Bender, J.), rendered September 21, 2009. The judgment convicted defendant, upon a nonjury verdict, of promoting prison contraband in the first degree and criminal possession of a weapon 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 a bench verdict of promoting prison contraband in the first degree (Penal Law § 205.25) and criminal possession of a weapon in the third degree (§ 265.02). We reject the contention of defendant that he was denied effective assistance of counsel. The alleged errors in defense counsel's representation set forth by defendant in support of his contention are mere disagreements with defense counsel's trial tactics, and defendant has failed to establish "the absence of strategic or other legitimate explanations" for defense counsel's alleged shortcomings (*People v Rivera*, 71 NY2d 705, 709). Viewing the evidence, the law and the circumstances of this case, in totality and as of the time of the representation, we conclude that defendant received meaningful representation (*see generally People v Baldi*, 54 NY2d 137, 147). Contrary to defendant's further contention, the sentence is not unduly harsh or severe.

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court