

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

577

KA 09-01479

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARK L. DICKESON, DEFENDANT-APPELLANT.

JOHN E. TYO, SHORTSVILLE, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JEFFREY L. TAYLOR OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (William F. Kocher, J.), rendered October 29, 2008. The judgment convicted defendant, upon a jury verdict, of driving while intoxicated, a class E felony (two counts).

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

Memorandum: On appeal from a judgment convicting him, following a jury trial, of two counts of driving while intoxicated as a felony (Vehicle and Traffic Law § 1192 [2], [3]; § 1193 [1] [c] [former (i)]), defendant contends that he was denied effective assistance of counsel. We reject that contention. Viewing the evidence, the law and the circumstances of this case in totality and as of the time of the representation, we conclude that defense counsel provided meaningful representation (*see generally People v Baldi*, 54 NY2d 137, 147). Defendant failed to demonstrate the absence of strategic or other legitimate explanations for defense counsel's alleged shortcomings (*see People v Marcial*, 41 AD3d 1308, lv denied 9 NY3d 878).

Entered: May 6, 2011

Patricia L. Morgan
Clerk of the Court