

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

1193

KA 10-00420

PRESENT: SCUDDER, P.J., FAHEY, CARNI, VALENTINO, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NELSON VILLANEUVA, DEFENDANT-APPELLANT.

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DAVID M. PALMIERE, ROCHESTER, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (BRIAN D. DENNIS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Ontario County Court (William F. Kocher, J.), rendered February 3, 2010. The judgment convicted defendant, upon his plea of guilty, of attempted burglary in the first 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 burglary in the first degree (Penal Law §§ 110.00, 140.30 [3]). Defendant's contention that he was denied effective assistance of counsel does not survive the guilty plea where, as here, " 'there is no showing that the plea bargaining process was infected by any allegedly ineffective assistance or that defendant entered the plea because of his attorney['s] allegedly poor performance' " (*People v Jackson*, \_\_\_ AD3d \_\_\_, \_\_\_ [Oct. 5, 2012], quoting *People v Burke*, 256 AD2d 1244, 1244, lv denied 93 NY2d 851). We reject defendant's further contention that the sentence is unduly harsh and severe.

Entered: November 9, 2012

Frances E. Cafarell  
Clerk of the Court