

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

1321

**KA 06-00554**

PRESENT: MARTOCHE, J.P., SMITH, PERADOTTO, GREEN, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMELL LEWIS, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (MATTHEW J. CLARK OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY A. GILLIGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered October 12, 2005. The judgment convicted defendant, after a nonjury trial, of murder in the second degree.

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

Memorandum: The sole contention of defendant in this appeal from a judgment convicting him following a nonjury trial of murder in the second degree (Penal Law § 125.25 [1]) is that he was denied effective assistance of counsel. We reject that contention (*see generally People v Flores*, 84 NY2d 184, 186-187; *People v Baldi*, 54 NY2d 137, 147). Defense counsel's failure to make various motions that had little or no chance of success does not constitute ineffective assistance of counsel (*see People v McDuffie*, 46 AD3d 1385, 1386, *lv denied* 10 NY3d 867; *People v Dashnaw*, 37 AD3d 860, 863, *lv denied* 8 NY3d 945; *People v Johnson*, 11 AD3d 979, 979-980, *lv denied* 3 NY3d 757). In addition, defense counsel's failure to object to County Court's *Sandoval* ruling or to seek a compromise ruling did not constitute ineffective assistance of counsel inasmuch as the court in this nonjury trial " 'is presumed to have evaluated the evidence [of defendant's past criminal conduct] only for the purpose of impeaching . . . defendant's credibility and not as evidence of guilt of the crime charged' " (*People v Maryon*, 20 AD3d 911, 912-913, *lv denied* 5 NY3d 854).

Contrary to defendant's further contention, neither defense counsel's failure to object to the prosecutor's allegedly improper remarks during summation nor defense counsel's limited cross-examination of certain witnesses deprived defendant of effective assistance of counsel, particularly in the context of this nonjury trial (*see Maryon*, 20 AD3d at 913; *see also People v Walker*, 50 AD3d

1452, 1453, *lv denied* 11 NY3d 795, 931).

Entered: November 13, 2009

Patricia L. Morgan  
Clerk of the Court