

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

216

KA 09-01458

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD M. MOORE, DEFENDANT-APPELLANT.

SCHLATHER, STUMBAR, PARKS & SALK, LLP, ITHACA (DAVID M. PARKS OF COUNSEL), FOR DEFENDANT-APPELLANT.

Appeal from a judgment of the Allegany County Court (Thomas P. Brown, J.), rendered June 19, 2008. The judgment convicted defendant, upon his plea of guilty, of driving while intoxicated, a class E felony.

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 driving while intoxicated as a felony (Vehicle and Traffic Law § 1192 [3]; § 1193 [1] [c] [former (i)]). We reject the contention of defendant that he was denied the benefit of his plea bargain. "Compliance with a plea bargain is to be tested against an objective reading of the bargain[] and not against a defendant's subjective interpretation thereof" (*People v Cataldo*, 39 NY2d 578, 580). Here, the records of the plea and sentencing proceedings establish that County Court complied with the plea bargain when it imposed sentence. Defendant's further contentions with respect to his motions to set aside the sentence pursuant to CPL 440.20 are not properly before us on appeal from the judgment of conviction, and defendant has not obtained permission to appeal from the order denying those motions (*see People v Thayer*, 210 AD2d 977; *see also People v Jermain*, 56 AD3d 1165, lv denied 11 NY3d 926).

Entered: February 10, 2011

Patricia L. Morgan
Clerk of the Court