

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

982

KA 13-01585

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BARRY WYZYKOWSKI, DEFENDANT-APPELLANT.

ERICKSON WEBB SCOLTON & HAJDU, LAKEWOOD (LYLE T. HAJDU OF COUNSEL),
FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (John L. Michalski, A.J.), rendered July 25, 2008. The judgment convicted defendant, upon his plea of guilty, of criminal sexual act 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 criminal sexual act in the first degree (Penal Law § 130.50 [4]). To the extent that defendant's contention that he was denied effective assistance of counsel at sentencing survives his guilty plea, we conclude that it lacks merit (*see People v LaCroce*, 83 AD3d 1388, 1388, *lv denied* 17 NY3d 807). Defendant failed to preserve for our review his contention that Supreme Court erred in failing to recuse itself (*see People v Prado*, 4 NY3d 725, 726, *rearg denied* 4 NY3d 795; *People v Dewiel*, 100 AD3d 1524, 1525, *lv denied* 20 NY3d 1010). In any event, that contention is without merit (*see generally People v Glynn*, 21 NY3d 614, 618; *People v Moreno*, 70 NY2d 403, 405-406; *People v Williams*, 57 AD3d 1440, 1441, *lv denied* 12 NY3d 789).

Entered: September 26, 2014

Frances E. Cafarell
Clerk of the Court