

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D54387  
G/hu

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Argued - November 3, 2017

WILLIAM F. MASTRO, J.P.  
L. PRISCILLA HALL  
SANDRA L. SGROI  
COLLEEN D. DUFFY, JJ.

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2011-02870

DECISION & ORDER

The People, etc., respondent,  
v Freddie Johnson, also known as Frankie Johnson,  
appellant.

(Ind. No. 2347/10)

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Charles T. Glaws, New York, NY, for appellant, and appellant pro se.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Victor Barall  
of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County  
(Matthew D’Emic, J.), rendered February 9, 2011, convicting him of arson in the second degree,  
upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant pleaded guilty to arson in the second degree, and was sentenced as a  
second violent felony offender (*see* CPL 400.15). Contrary to the defendant’s contention on appeal,  
the Supreme Court did not err in failing to hold a hearing as to the constitutionality of a prior  
conviction on which the second violent felony offender adjudication was based. Although the  
defendant initially indicated that he controverted the allegations of the predicate felony statement  
with respect to the constitutionality of the prior conviction, the defendant then decided to withdraw  
that challenge, and declined to controvert the allegations of the statement. Accordingly, no hearing  
was required (*see* CPL 400.15[4]).

The defendant’s pro se challenge to the factual sufficiency of the plea is unpreserved

January 17, 2018

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for appellate review (*see People v Lopez*, 71 NY2d 662, 665). Further, preservation was required because, contrary to the defendant's contention, the defendant's recitation of the facts did not negate the element of intent or suggest the possibility of an "intoxication defense" so as to clearly cast significant doubt upon his guilt or otherwise call into question the voluntariness of the plea (*see id.* at 666). In any event, the factual allocution was sufficient (*see People v Goldstein*, 12 NY3d 295, 301; *People v Seeber*, 4 NY3d 780, 781).

The defendant's contention, in his pro se supplemental brief, that he received ineffective assistance of counsel is not reviewable on direct appeal because it involves matter dehors the record (*see People v Love*, 57 NY2d 998, 1000; *People v Williams*, 149 AD3d 986).

The defendant's remaining contentions, raised in counsel's brief and the pro se supplemental brief, are without merit.

MASTRO, J.P., HALL, SGROI and DUFFY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court