

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

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KA 08-00656

PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CALVIN D. HOBBY, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LESLIE E. SWIFT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (John J. Ark, J.), rendered January 31, 2008. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a weapon in the second 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 criminal possession of a weapon in the second degree (Penal Law §§ 110.00, 265.03 [3]). We reject defendant's contention that his plea was coerced by the threat of federal prosecution and thus that Supreme Court abused its discretion in denying his motion to withdraw his plea on that ground (*see People v Mason*, 56 AD3d 1201, 1202, *lv denied* 11 NY3d 927). Defendant admitted during the plea allocution that he committed the offense and "did not claim either that he was innocent or that he had been coerced" into pleading guilty (*People v Sparcino*, 78 AD3d 1508, 1509, *lv denied* 16 NY3d 746). The fact that the possibility of a federal prosecution may have influenced defendant's decision to plead guilty is insufficient to establish that the plea was coerced (*see generally People v McDonnell*, 302 AD2d 619, *lv denied* 100 NY2d 540).

Entered: April 29, 2011

Patricia L. Morgan
Clerk of the Court