

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

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**KA 09-00725**

PRESENT: SMITH, J.P., FAHEY, VALENTINO, WHALEN, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MANUEL ZHANAY, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (CHRISTINE M. COOK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (SUSAN C. AZZARELLI OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered January 16, 2009. The judgment convicted defendant, upon his plea of guilty, of rape in the third degree (three counts) and criminal sexual act in the third degree.

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

Memorandum: On appeal from a judgment convicting him of, *inter alia*, three counts of rape in the third degree (Penal Law § 130.25 [2]), defendant contends that he was denied effective assistance of counsel. That contention involves matters outside the record and should be raised by way of a motion pursuant to CPL article 440 (*see People v Haffiz*, 19 NY3d 883, 885; *People v Woods*, 93 AD3d 1287, 1289, *lv denied* 19 NY3d 969).

Entered: February 1, 2013

Frances E. Cafarell  
Clerk of the Court