

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

686

KA 12-00438

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN J. MCCORMACK, DEFENDANT-APPELLANT.

MARK D. FUNK, CONFLICT DEFENDER, ROCHESTER (KIMBERLY J. CZAPRANSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (John R. Schwartz, A.J.), rendered November 14, 2011. The judgment convicted defendant, upon his plea of guilty, of burglary in the third degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his guilty plea of burglary in the third degree (Penal Law § 140.20). We reject defendant's contention that the plea colloquy was factually insufficient. Defendant admitted the essential elements of the crime during the plea colloquy, including that he entered the building with the intent to steal (*see People v Hinkson*, 59 AD3d 941, 941, *lv denied* 12 NY3d 817; *People v Jackson*, 286 AD2d 912, 912-913, *lv denied* 97 NY2d 755). Contrary to defendant's further contention, defense counsel did not take a position adverse to his pro se motion to withdraw the plea, and thus there was no reason for County Court to assign new counsel (*see People v Lindsay*, 134 AD3d 1452, 1452-1453, *lv denied* 27 NY3d 967; *People v Strasser*, 83 AD3d 1411, 1411-1412; *see generally People v Mitchell*, 21 NY3d 964, 967).

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court