

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

1149

KA 18-01267

PRESENT: WHALEN, P.J., SMITH, NEMOYER, AND CURRAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANTHONY SPENCER, JR., ALSO KNOWN AS ANTHONY J. SPENCER, JR., ALSO KNOWN AS ANTHONY J. SPENCER, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (JOHN J. MORRISSEY OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (ROBERT J. SHOEMAKER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Genesee County Court (Charles N. Zambito, J.), rendered April 6, 2018. The judgment convicted defendant, upon a jury verdict, of gang assault in the first degree and assault 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 a jury verdict, of gang assault in the first degree (Penal Law § 120.07) and assault in the first degree (§ 120.10 [1]). We affirm.

Viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we reject defendant's contention that the verdict is against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). Contrary to defendant's further contention, County Court properly denied his request for a justification instruction (*see People v McGhee*, 4 AD3d 485, 486 [2d Dept 2004], *lv denied* 2 NY3d 803 [2004]; *see generally People v Hall*, 195 AD3d 1574, 1575 [4th Dept 2021], *lv denied* 37 NY3d 1096 [2021]). We reject defendant's four claims of ineffective assistance of counsel (*see People v Harris*, 195 AD3d 1535, 1537 [4th Dept 2021], *lv denied* 37 NY3d 1027 [2021]; *People v Townsend*, 171 AD3d 1479, 1481 [4th Dept 2019], *lv denied* 33 NY3d 1109 [2019]; *People v Dark*, 122 AD3d 1321, 1322-1323 [4th Dept 2014], *lv denied* 26 NY3d 1039 [2015], *reconsideration denied* 27 NY3d 1068 [2016]; *People v Betsch*, 4 AD3d 818, 819 [4th Dept 2004], *lv denied* 2 NY3d 796 [2004], *reconsideration denied* 3 NY3d 657 [2004]). The sentence is not unduly harsh or severe. Defendant's remaining contention is unpreserved for appellate review, and we decline to

exercise our power to address it as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]).

Entered: March 18, 2022

Ann Dillon Flynn  
Clerk of the Court