

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

820

KA 08-02135

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LUIS HERNANDEZ, DEFENDANT-APPELLANT.

MICHAEL J. STACHOWSKI, P.C., BUFFALO (MICHAEL J. STACHOWSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered May 30, 2007. The judgment convicted defendant, upon his plea of guilty, of manslaughter in the first degree.

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

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of manslaughter in the first degree (Penal Law § 125.20 [1]), defendant contends that County Court erred in denying his motion to withdraw his plea. We reject that contention, inasmuch as defendant's motion was " 'based upon generalized claims and conclusory allegations that are unsupported by the record' " (*People v Rouse*, 1 AD3d 958, 959, *lv denied* 1 NY3d 634). Although defendant's waiver of the right to appeal is not addressed by the People or defendant on appeal, we note that the record establishes that the waiver was knowing and intelligent (*see People v Lopez*, 6 NY3d 248, 256). We thus conclude that the waiver of the right to appeal encompasses defendant's further contention that the sentence is unduly harsh and severe (*see id.*).

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court

