

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

1129

**KA 08-01498**

PRESENT: SCUDDER, P.J., SMITH, FAHEY, CARNI, AND VALENTINO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ERVIN J. SMALLS, JR., DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (MARK C. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

ERVIN J. SMALLS, JR., DEFENDANT-APPELLANT PRO SE.

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

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Appeal from a judgment of the Supreme Court, Monroe County (Francis A. Affronti, J.), rendered May 21, 2008. 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.

Same Memorandum as in *People v Smalls* ([appeal No. 1] \_\_\_ AD3d \_\_\_ [Nov. 9, 2012]).

Entered: November 9, 2012

Frances E. Cafarell  
Clerk of the Court