

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

1304

KA 15-00358

PRESENT: WHALEN, P.J., PERADOTTO, TROUTMAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARIO ALVERADO, ALSO KNOWN AS MARIO
ALVERADO-MATEO, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES A. HOBBS OF
COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County
(Francis A. Affronti, J.), rendered February 10, 2015. The judgment
convicted defendant, upon a jury verdict, of rape in the first degree
and sodomy 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 following a
jury trial of rape in the first degree (Penal Law § 130.35 [1]) and
sodomy in the first degree (former § 130.50 [1]), defendant contends
that he was denied effective assistance of counsel as a result of
defense counsel's failure to make a motion to dismiss the indictment
as time-barred (see CPL 30.10 [2] [former (a)], [b]). The record on
appeal, however, "is inadequate to enable us to determine whether such
a motion would have been successful and whether defense counsel's
failure to make that motion deprived defendant of meaningful
representation" (*People v Youngs*, 101 AD3d 1589, 1589 [4th Dept 2012],
lv denied 20 NY3d 1105 [2013]). Thus, we conclude that "defendant's
contention is appropriately raised by way of a motion pursuant to CPL
article 440" (*id.*).

Entered: December 20, 2019

Mark W. Bennett
Clerk of the Court