

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

736

**KA 19-01917**

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, LINDLEY, AND NEMOYER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIAM GRIFFIN, DEFENDANT-APPELLANT.

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DONALD R. GERACE, UTICA, FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (EVAN A. ESSWEIN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered March 6, 2019. The judgment convicted defendant upon a jury verdict of rape in the third degree and endangering the welfare of a child.

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 rape in the third degree (Penal Law § 130.25 [2]) and endangering the welfare of a child (§ 260.10 [1]). We reject defendant's contention that County Court improperly denied his request to represent himself. The right to counsel may be waived, allowing a defendant to proceed pro se, when: " '(1) the request is unequivocal and timely asserted, (2) there has been a knowing and intelligent waiver of the right to counsel, and (3) the defendant has not engaged in conduct which would prevent the fair and orderly exposition of the issues' " (*People v Silburn*, 31 NY3d 144, 150 [2018]; see generally *People v Crampe*, 17 NY3d 469, 481-482 [2011], cert denied 565 US 1261 [2012]). Here, defendant failed to satisfy the first factor, inasmuch as his request to proceed with either retained counsel or to appear as co-counsel alongside his currently assigned public defender did not " 'demonstrate an actual fixed intention and desire to proceed without professional assistance in his defense' " (*Silburn*, 31 NY3d at 150; see *People v Griffith*, 181 AD3d 1170, 1171 [4th Dept 2020], lv denied 35 NY3d 1045 [2020]). We have reviewed defendant's remaining contentions and conclude that none warrants modification or reversal of the judgment.

Entered: October 7, 2022

Ann Dillon Flynn  
Clerk of the Court