

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

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KA 20-01163

PRESENT: SMITH, J.P., CARNI, LINDLEY, TROUTMAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NURBEK NORBEKOV, DEFENDANT-APPELLANT.

MATTHEW K. BOROWSKI, BUFFALO, FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (ASHLEY R. LOWRY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Susan M. Eagan, J.), rendered June 23, 2020. The judgment convicted defendant upon a plea of guilty of endangering the welfare of a child.

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 endangering the welfare of a child (Penal Law § 260.10 [1]), defendant contends that defense counsel failed to advise him of the immigration consequences of his plea and that he was thereby denied effective assistance of counsel. On this record, however, it is unclear what advice defendant received from defense counsel. Defendant's contention therefore involves allegations of deficient performance of counsel that do not appear on the record, and thus it must be raised by way of a motion pursuant to CPL 440.10 (see *People v Rajab*, 133 AD3d 1241, 1242 [4th Dept 2015], lv denied 27 NY3d 1154 [2016]; see generally *People v Gomez*, 186 AD3d 422, 423 [1st Dept 2020]).

Entered: March 26, 2021

Mark W. Bennett
Clerk of the Court