

APPENDIX ~~X~~ A

2023 WL 2903677 (Table)

Only the Westlaw citation is currently available.

THIS DECISION IS UNCORRECTED AND SUBJECT TO REVISION
BEFORE PUBLICATION IN THE NEW YORK REPORTS.

(The decision of the Court of Appeals of New York is referenced in the New York Supplement and North Eastern Reporter as a decision without published opinion.)

Court of Appeals of New York.

People

v.

Gunn (Darrell)

March 15, 2023

4th Dept: 12/23/2022 (Onondaga)

Opinion

Garcia, J.

Applications in Criminal Cases for Leave to Appeal Denied

All Citations

Slip Copy, 2023 WL 2903677 (Table)

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State of New York

Court of Appeals

BEFORE: HON. MICHAEL J. GARCIA
Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,
-against-

**ORDER
DENYING
LEAVE**

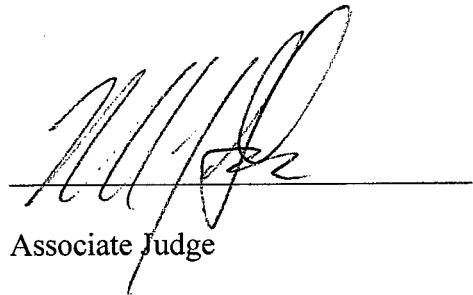
DARRELL GUNN,
Appellant.

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is
ORDERED that the application is denied.

Dated: March 15, 2023

at Albany, New York


Associate Judge

*Description of Order: Order of the Supreme Court, Appellate Division, Fourth Department, entered December 23, 2022, denying defendant's motion for a writ of error coram nobis.

APPENDIX B

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

Case No:1568/06

KA 05-00836

PRESENT: SMITH, J.P., LINDLEY, NEMOYER, CURRAN, AND MONTOUR, JJ.

PEOPLE OF THE STATE OF NEW YORK, PLAINTIFF-RESPONDENT,

V

DARRELL GUNN, DEFENDANT-APPELLANT.

Indictment No: 2003-0242-1

Appellant having moved for a writ of error coram nobis to vacate the order of this Court entered December 22, 2006, which affirmed a judgment of Onondaga County Court, rendered October 2, 2003,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is denied.

Entered: December 23, 2022

Ann Dillon Flynn
Clerk of the Court

APPENDIX I

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

1568

KA 05-00836

PRESENT: HURLBUTT, J.P., SMITH, CENTRA, AND PINE, JJ.

PEOPLE OF THE STATE OF NEW YORK,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

DARRELL GUNN, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PHILIP ROTHSCHILD OF COUNSEL), FOR DEFENDANT-APPELLANT.

DARRELL GUNN, DEFENDANT-APPELLANT PRO SE.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered October 2, 2003. The judgment convicted defendant, upon his plea of guilty, of murder in the first degree and attempted murder in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of murder in the first degree (Penal Law § 125.27 [1] [a] [vii]; [b]) and attempted murder in the first degree (§§ 110.00, 125.27 [1] [a] [vii]; [b]). Although defendant contends that the plea was not knowingly or voluntarily entered because he did not recite the underlying facts of the crimes, he is in effect challenging the factual sufficiency of the plea allocution (see *People v White*, 24 AD3d 1220, lv denied 6 NY3d 820). That challenge is encompassed by the waiver of the right to appeal (see *id.*), and defendant also failed to preserve that challenge for our review (see *People v Spikes*, 28 AD3d 1101, lv denied 7 NY3d 818; *People v Bland*, 27 AD3d 1052, lv denied 6 NY3d 892; *White*, 24 AD3d at 1220). The plea allocution does not clearly cast significant doubt upon defendant's guilt or otherwise call into question the voluntariness of the plea, and thus the plea allocution does not fall within the rare case exception to the preservation doctrine (see *People v Farnsworth*, 32 AD3d 1176, lv denied 7 NY3d 867; *People v Oltz*, 1 AD3d 934, lv denied 1 NY3d 632). "There is no requirement that defendant personally recite the facts underlying the crime[s], and his responses to the questions of [County] Court during the plea colloquy did not negate any element of the offense[s] or otherwise cast any doubt on

defendant's guilt" (*Spikes*, 28 AD3d at 1102).

Defendant further contends in his pro se supplemental brief that his guilty plea was coerced by the threat of the death penalty, citing *Matter of Hynes v Tomei* (92 NY2d 613, cert denied 527 US 1015). The decision of the Court of Appeals in *Hynes* does not apply to "pleas of guilty to first degree murder when no notice of intent to seek the death penalty is pending, since defendants in that situation face the same maximum sentence regardless of how they are convicted" (*id.* at 629). Here, there was no notice of intent to seek the death penalty pending at the time defendant pleaded guilty, and we thus reject defendant's contention. We also reject the contention of defendant in his pro se supplemental brief that he was denied effective assistance of counsel based on defense counsel's failure to request a competency hearing. "A defendant is presumed competent and is not entitled, as a matter of law, to a competency hearing unless the court has reasonable grounds to believe that, because of mental disease or defect, the defendant is incapable of understanding the proceedings against him or her" (*People v Courcelle*, 15 AD3d 688, 689, lv denied 4 NY3d 829). There is no indication in the record that defendant was "incapable of understanding the proceedings against him" (*id.*; see *People v Keebler*, 15 AD3d 724, 726, lv denied 4 NY3d 854), and it therefore cannot be said that defense counsel's failure to request a competency hearing constituted ineffective assistance of counsel (see *Keebler*, 15 AD3d at 726-727; *People v Comfort*, 278 AD2d 872, 873-874).

Supreme Court
APPELLATE DIVISION,
Fourth Judicial Department,
Clerk's Office, Rochester, N.Y.

*I, JOANN M. WAHL, Clerk of the Appellate Division of the Supreme Court in the Fourth
Judicial Department, do hereby certify that this is a true copy of the original order, now
on file in this office.*



IN WITNESS WHEREOF, *I have hereunto set my
hand and affixed the seal of said Court in the City
of Rochester, New York, this*

DEC 22 2006

Joann M. Wahl
.....
Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**