
This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 186 SSM 29
The People &c.,
Respondent,
v.
Jermar McDaniel,
Appellant.

Submitted by Arthur H. Hopkirk, for appellant.
Submitted by Kayonia L. Whetstone, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Because defense counsel's decision not to seek dismissal of the robbery in the first degree charge for insufficient evidence would not have resulted in a dismissal of that charge (see People v Lopez, 73 NY2d 214, 219-220 [1989]; People v Baskerville, 60 NY2d 374, 380-381 [1983]), defendant's

claim of ineffective assistance of counsel is meritless.

Furthermore, the attorney's conduct did not consist of "egregious and prejudicial error such that defendant did not receive a fair trial" (People v Benevento, 91 NY2d 708, 713 [1998], citing People v Flores, 84 NY2d 184, 188-189 [1994]), but rather "viewed in totality and as of the time of the representation, reveal[s] that the attorney provided meaningful representation" (People v Baldi, 54 NY2d 137, 147 [1981]).

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided September 1, 2009