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

No. 86 SSM 53
The People &c.,
Respondent,
v.
Juan Rivera,
Appellant.

Submitted by appellant, pro se.
Submitted by Timothy C. Stone, for respondent.
New York County Lawyers' Association, amicus curiae.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Defendant has not demonstrated the absence of a
legitimate explanation for his appellate counsel's failure to
brief the issue whether his guilty plea should be vacated under
People v Catu (4 NY3d 242 [2005]) (see People v Borrell, 12 NY3d

365, 369 [2009]; People v Rivera, 71 NY2d 705, 709 [1988]).

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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 February 18, 2010