

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

People v. Aimetti

2021 NY Slip Op 03465 (App. Div. 2021) · No. 2019-07605 · Decided June 2, 2021

OPINION

PER CURIAM.

People v Aimetti (2021 NY Slip Op 03465) People v Aimetti 2021 NY Slip Op 03465 Decided on June 2, 2021 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on June 2, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

CHERYL E. CHAMBERS LEONARD B. AUSTIN COLLEEN D. DUFFY, JJ. 2019-07605 (Ind. No. 58598/17) [*1]The People of the State of New York, respondent, vRobert Aimetti, appellant. Robert Aimetti, Brooklyn, NY, appellant pro se. Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Jean M. Joyce, and Jason Eldridge of counsel), for respondent. DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Kings County (Matthew Sciarrino, Jr., J.), rendered June 3, 2019, convicting him of assault in the third degree, menacing in the third degree (two counts), harassment in the second degree, and criminal contempt in the second degree (four counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed. The defendant failed to preserve for appellate review his challenge to the legal sufficiency of the evidence supporting his convictions (see CPL 470.05[2]; People v Hawkins, 11 NY3d 484, 492).

In any event, viewing the evidence in the light most favorable to the prosecution (see People v Contes, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt.

Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (see CPL 470.15[5]; People v Danielson, 9 NY3d 342, 348-349), we are satisfied that the verdict of guilt was not against the weight of the evidence (see People v Romero, 7 NY3d 633).

The defendant's claim of ineffective assistance of counsel is based, in part, on matter appearing on the record and, in part, on matter outside the record, and thus, constitutes a "mixed claim of ineffective assistance" (People v Maxwell, 89 AD3d 1108, 1109; see People v Evans, 16 NY3d 571, 575 n 2). Since the defendant's claim of ineffective assistance of counsel cannot be resolved

without reference to matter outside the record, a CPL 440.10 proceeding is the appropriate forum for reviewing the claim in its entirety, and we decline to review the claim on this direct appeal (see *People v Maffei*, 35 NY3d 264, 269-270; *People v Martinez-Galdamez*, ___ AD3d ___, 2021 NY Slip Op 02178 [2d Dept]; *People v Maxwell*, 89 AD3d at 1109).

The defendant's remaining contention is without merit. DILLON, J.P., CHAMBERS, AUSTIN and DUFFY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court