



PEOPLE

627 N.Y.S.2d 71 (1995) | Cited 0 times | New York Supreme Court | May 30, 1995

DECISION & ORDER

Pro se motion by the appellant on an appeal from a judgment of the Supreme Court, Kings County, rendered February 1, 1993, for leave to file a supplemental pro se brief.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is,

Ordered that the motion is denied.

PIZZUTO, J.P., HART, FRIEDMANN and FLORIO, JJ., concur.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered February 1, 1993, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

Ordered that the judgment is affirmed.

The defendant's contention that the court should have submitted to the jury the issue of whether two key witnesses were accomplices as a matter of fact, with the result that their testimony required corroboration, is unpreserved for appellate review (see, *People v James*, 75 N.Y.2d 874, 554 N.Y.S.2d 465, 553 N.E.2d 1013; *People v Mahan*, 195 A.D.2d 881, 601 N.Y.S.2d 638). In any event, there is no reasonable view of the trial evidence which could support a conclusion that the witnesses in question participated in the defendant's crime or in a crime based on the same facts or conduct as the defendant's crime (see, CPL 60.22[2]; *People v Jones*, 73 N.Y.2d 902, 539 N.Y.S.2d 286, 536 N.E.2d 615; *People v Tucker*, 72 N.Y.2d 849, 532 N.Y.S.2d 91, 527 N.E.2d 1227; *People v LaFuente*, 187 A.D.2d 613, 590 N.Y.S.2d 111; *People v Dagnone*, 187 A.D.2d 604, 590 N.Y.S.2d 115). Although the evidence establishes that the defendant and his accomplices planned the murder at the apartment of these two witnesses, the record is devoid of proof that the witnesses participated in any way in the preparations, or were at all involved in the crime itself (see, *People v Tucker*, supra).

The defendant's sentence is not excessive (see, *People v Suitte*, 90 A.D.2d 80, 455 N.Y.S.2d 675).

PIZZUTO, J.P., HART, FRIEDMANN and FLORIO, JJ., concur.

