

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13679
X/hu

_____AD3d_____

Argued - January 2, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
MARK C. DILLON, JJ.

2005-04232

DECISION & ORDER

The People, etc., respondent,
v Shawn Coleman, appellant.

(Ind. No. 1967N/01)

Joseph F. DeFelice, Kew Gardens, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and
Margaret E. Mainusch of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the County Court, Nassau County (Peck, J.), entered April 5, 2005, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court (DeRiggs, J.), rendered May 5, 2003, convicting him of robbery in the second degree, robbery in the third degree, and resisting arrest, upon a jury verdict, and imposing sentence.

ORDERED that the order is affirmed.

In deciding a motion pursuant to CPL 440.10, the trial court need not hold a hearing if the parties' submissions are sufficient to render a determination (*see* CPL 440.30[1], [4]; *People v Satterfield*, 66 NY2d 796, 799; *People v Demetsenare*, 14 AD3d 792, 793). The defendant must show that the nonrecord facts sought to be established are material and would entitle him or her to relief (*see People v Satterfield, supra; People v Demetsenare, supra*). Here, the defendant's claims of ineffective assistance of trial counsel were largely based upon unsubstantiated, conclusory allegations, and thus, the defendant's motion pursuant to CPL 440.10 was properly denied without a hearing (*see People v Hall*, 28 AD3d 678, *lv denied* 7 NY3d 867; *People v Bacchi*, 186 AD2d 663).

February 6, 2007

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The defendant's remaining contention was not raised in the underlying motion papers and therefore is not properly before us on appeal.

MILLER, J.P., SPOLZINO, RITTER and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court