

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

D21052
G/kmg

_____AD3d_____

Argued - October 21, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
WILLIAM E. McCARTHY
THOMAS A. DICKERSON, JJ.

2006-09496

DECISION & ORDER

The People, etc., respondent,
v Michael Flournoy, appellant.

(Ind. No. 14346/96)

Robert J. Boyle, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Phyllis Mintz of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the Supreme Court, Kings County (Ruchelsman, J.), dated October 4, 2006, which, without a hearing, denied his motion pursuant to CPL 440.10 to vacate a judgment of the same court rendered July 3, 1997, convicting him of attempted murder in the second degree (two counts), assault in the first degree (two counts), assault in the second degree, and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the order is affirmed.

The defendant was deprived of his constitutional right to counsel at a lineup viewed by one eyewitness. However, the error was harmless. The evidence of the defendant's guilt, without reference to the lineup identification, was overwhelming, and there is no reasonable possibility that the error might have contributed to the defendant's conviction (*see People v Meadows*, 64 NY2d 956, 957-958, *cert denied* 474 US 820; *People v Crimmins*, 36 NY2d 230, 237; *People v Orraca*, 237 AD2d 148, 149).

The defendant was not denied the effective assistance of counsel (*see People v*

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Benevento, 91 NY2d 708, 712).

Accordingly, the Supreme Court properly denied the defendant's motion pursuant to CPL 440.10 to vacate the judgment of conviction without holding a hearing (*see* CPL 440.30[4][a]).

SPOLZINO, J.P., FLORIO, McCARTHY and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court