

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

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_____AD3d_____

Submitted - March 19, 2009

A. GAIL PRUDENTI, P.J.
FRED T. SANTUCCI
ANITA R. FLORIO
ARIEL E. BELEN, JJ.

2006-08955

DECISION & ORDER

The People, etc., respondent,
v Carlos Graves, appellant.

(Ind. No. 9064/95)

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Diane R. Eisner of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the Supreme Court, Kings County (Lott, J.), dated August 10, 2006, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court rendered September 9, 1996, convicting him of murder in the second degree and attempted murder in the second degree, upon a jury verdict, and imposing sentence, and, in effect, pursuant to CPL 440.20 to set aside the sentence imposed.

ORDERED that the order is affirmed.

In support of that branch of his motion which was pursuant to CPL 440.10 to vacate the judgment against him, the defendant contended that the prosecution committed a *Brady* violation (*see Brady v Maryland*, 373 US 83) by failing to disclose that one of its witnesses at trial had prior arrests and convictions under a different name. Since this contention was either raised, or could have been raised, in the context of a first, unsuccessful motion pursuant to CPL 440.10 made by the defendant, it was within the Supreme Court's discretion to deny, without a hearing, that branch of the defendant's current motion (*see* CPL 440.10[3][b], [c]; *People v Cochrane*, 27 AD3d 659, 660, *cert denied* 538 US 1060). In any event, there is no reasonable possibility that the nondisclosure

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affected the outcome of the trial (*see People v Pressley*, 91 NY2d 825; *People v Vilaridi*, 76 NY2d 67; *People v McGee*, 232 AD2d 429).

Further, contrary to the defendant's contention in support of that branch of his motion which was, in effect, pursuant to CPL 440.20, the consecutive sentences imposed were not illegal. The evidence at trial established that the crimes involved separate and distinct acts against separate victims (*see People v Brathwaite*, 63 NY2d 839, 843; *People v Boone*, 30 AD3d 535, 536; *People v Maldonado*, 5 AD3d 505, 506-507; *People v Porter*, 256 AD2d 363, 364).

PRUDENTI, P.J., SANTUCCI, FLORIO and BELEN, 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