

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

D24083
Y/hu

_____AD3d_____

Submitted - June 18, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
LEONARD B. AUSTIN, JJ.

2005-01829

DECISION & ORDER

The People, etc., respondent,
v Aaron Waymon, true name Waymon Aaron, appellant.

(Ind. No. 1699/00)

Steven Banks, New York, N.Y. (Joanne Legano Ross of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Karol B. Mangum of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the Supreme Court, Kings County (Feldman, J.), entered January 25, 2005, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court rendered June 27, 2001, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the order is affirmed.

To obtain a hearing on a motion to vacate a judgment of conviction, it is the defendant's burden as movant to come forward with allegations that raise a triable issue of fact sufficient to challenge the presumed validity of a judgment of conviction (*see People v Session*, 34 NY2d 254, 255-256; *People v Bacchi*, 186 AD2d 663, 664-665). Mere conclusory allegations of ultimate facts are insufficient to warrant a hearing (*see People v Brown*, 56 NY2d 242, 246-247; *see also People v Broxton*, 34 AD3d 491, 492). Here, the defendant's claim of ineffective assistance of trial counsel was largely based upon unsubstantiated conclusory allegations and, thus, his motion

August 25, 2009

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pursuant to CPL 440.10 was properly denied without a hearing (*see People v Brown*, 56 NY2d at 246-247; *People v Session*, 34 NY2d at 256; *People v Coleman*, 37 AD3d 491, 491; *People v Broxton*, 34 AD3d at 492; *People v LaPella*, 185 AD2d 861, 862).

RIVERA, J.P., FLORIO, DICKERSON and AUSTIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court