

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

D24859
C/hu

_____AD3d_____

Argued - October 8, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2008-02405

DECISION & ORDER

The People, etc., respondent,
v Ronald Smiley, appellant.

(Ind. No. 586/00)

Lynn W. L. Fahey, New York, N.Y. (Warren S. Landau of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (Gary Fidel and Edward D. Saslaw of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the Supreme Court, Queens County (Kron, J.), dated January 22, 2008, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court rendered November 3, 2000, convicting him of attempted murder in the second degree (two counts), assault in the first degree, 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 contends that the Supreme Court erroneously denied, without a hearing, his motion pursuant to CPL 440.10 to vacate his judgment of conviction on the ground that he was denied the effective assistance of counsel. In support of his CPL 440.10 motion, the defendant submitted his own affidavit wherein he alleged that trial counsel failed to inform him of the maximum sentence he faced in the event that he chose to reject a particular plea offer, and failed to recognize and advise him of the possibility that he could face consecutive sentences. The defendant claimed that had he known this information, he would not have rejected the plea offer. Since the defendant's self-serving allegations are not supported by any other affidavit or evidence, and under

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all the circumstances attending the case, there is no reasonable possibility that such allegations are true, the Supreme Court did not improvidently exercise its discretion in denying the defendant's motion without a hearing (*see* CPL 440.30[4][d]; *see also* *People v Green*, 200 AD2d 687, 687; *People v Pachay*, 185 AD2d 287, 287; *cf. People v Mobley*, 59 AD3d 741, 742).

SKELOS, J.P., FLORIO, BALKIN and LEVENTHAL, 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