

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

D26240
Y/prt

_____AD3d_____

Argued - January 12, 2010

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
HOWARD MILLER
RANDALL T. ENG, JJ.

2008-01622

DECISION & ORDER

The People, etc., respondent,
v Ricardo Mendez, appellant.

(Ind. No. 7712/01)

Lynn W. L. Fahey, New York, N.Y. (Sarah J. Berger of counsel), for appellant.

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

Appeal by the defendant, by permission, from an order of the Supreme Court, Kings County (Mangano, Jr., J.), dated October 17, 2007, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court rendered March 23, 2007, convicting him of robbery in the first degree (three counts), robbery in the second degree (three counts), and criminal possession of a controlled substance in the seventh degree, upon a jury verdict, and imposing sentence.

ORDERED that the order is affirmed.

The Supreme Court providently exercised its discretion in denying, without a hearing, the defendant's motion to vacate the judgment of conviction on the basis of certain allegedly newly-discovered evidence (*see People v Baxley*, 84 NY2d 208, 212; *People v Crimmins*, 38 NY2d 407, 419; *People v Perkins*, 234 AD2d 482). The affidavit from a fellow inmate that the defendant submitted merely contradicted the evidence adduced at the trial, and was not "of such character as to create a probability that had [it] been received at the trial the verdict would have been more

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favorable to the defendant” (CPL 440.10[1][g]; see *People v Cruz*, 23 AD3d 577; *People v Perkins*, 234 AD2d at 482).

COVELLO, J.P., SANTUCCI, MILLER and ENG, 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