

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

D29359  
Y/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 10, 2010

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
RUTH C. BALKIN  
CHERYL E. CHAMBERS, JJ.

2008-10679

DECISION & ORDER

The People, etc., respondent,  
v Alex Manuel Medina, appellant.

(Ind. No. 96-01055)

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Robert L. Moore, West Hempstead, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Laurie Sapakoff, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the County Court, Westchester County (Zambelli, J.), entered October 30, 2008, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court (Leavitt, J.), rendered May 21, 1997, convicting him of murder in the second degree, attempted robbery in the first degree, attempted robbery in the second degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the order is affirmed.

The defendant's motion to vacate his judgment of conviction pursuant to CPL 440.10(1)(g) is based primarily on a statement from a fellow inmate, recanting a prior statement to police inculcating the defendant. Not only was the statement unsworn (*see* CPL 440.30[4][b]), but it was prepared more than 10 years after the defendant's conviction, and after the inmate moved to the same prison in which the defendant was incarcerated. Moreover, the inmate's account of the incident in question is unbelievable, particularly in light of the fact that it contradicts the defendant's own version of events.

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Accordingly, the evidence presented was not “of such character as to create a probability that had [it] been received at the trial the verdict would have been more favorable to the defendant” (CPL 440.10[1][g]), and the County Court providently exercised its discretion in denying the defendant’s motion without a hearing (*see People v Mendez*, 71 AD3d 696; *People v Mears*, 55 AD3d 439, 440; *People v Cintron*, 306 AD2d 151, 152; *People v Perkins*, 234 AD2d 482; *People v Robinson*, 211 AD2d 733, 733-734).

There is not merit to the defendant’s contention that the County Court should have considered certain evidence submitted in connection with his prior CPL 440.10 motion when assessing the instant CPL 440.10 motion (*see* CPL 440.10[3][b]).

SKELOS, J.P., SANTUCCI, BALKIN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court