

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

D29954  
H/prt

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Submitted - January 20, 2011

A. GAIL PRUDENTI, P.J.  
REINALDO E. RIVERA  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

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2009-04412

DECISION & ORDER

The People, etc., respondent,  
v Edwin Serrano, appellant.

(Ind. No. 1306/09)

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Mark Diamond, New York, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Douglas Noll and Richard R. Martell of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (O'Brien, J.), rendered September 25, 2009, convicting him of criminal sale of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

Prior to sentencing, the defendant moved, inter alia, to correct certain alleged misstatements in the presentence investigation report pursuant to CPL 400.10, and the County Court granted the motion to the extent of appending to the report two letters submitted by the defendant, one from his mother and one from a friend, which refuted the challenged statements. In imposing sentence, the County Court expressly eschewed any reliance on the challenged statements. To the extent that those statements could cause any prejudice to the defendant subsequent to the sentencing proceeding, the relief granted in response to his motion was sufficient to prevent such prejudice. Thus, contrary to the defendant's contention, a hearing regarding the accuracy of the challenged statements was not necessary (*cf. People v Outley*, 80 NY2d 702, 713).

Contrary to the defendant's contention, the County Court did not improvidently exercise its discretion in failing to issue a certificate of relief from disabilities. Although, as the County Court correctly determined, the defendant was an "eligible offender" within the meaning of Correction Law § 701(1) (*see* Correction Law § 700[1][a]), the defendant did not satisfy the further statutory requirements for the issuance of such a certificate by a court. Specifically, under Correction Law § 702(1), the County Court was not authorized to issue a certificate of relief from disabilities, since the sentence imposed was not a revocable sentence (*see* Correction Law § 700[1][c]), and the defendant was committed to the custody of the Department of Correctional Services. Moreover, the defendant's trial counsel did not render ineffective assistance by failing to request a certificate of relief from disabilities at the sentencing proceeding, since, for the reasons stated above, such a request had no chance of success (*see People v Goddard*, 72 AD3d 839, 840).

PRUDENTI, P.J., RIVERA, LOTT and MILLER, 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