

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

D33047
G/nl

_____AD3d_____

Submitted - October 28, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-00188

DECISION & ORDER

The People, etc., respondent,
v Angel Alomar, appellant.

(Ind. No. 06-00057)

Michael G. Paul, New City, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Lauren E. Grasso and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the County Court, Orange County (Berry, J.), dated October 30, 2009, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate a judgment of the same court rendered May 15, 2006, convicting him of criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree (two counts), and reckless endangerment in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the order is reversed, on the law, and the matter is remitted to the County Court, Orange County, for a hearing and new determination of the defendant's motion.

This matter must be remitted to the County Court, Orange County, for a hearing and new determination of the defendant's motion pursuant to CPL 440.10 to vacate the judgment on the ground that the defendant was deprived of the effective assistance of counsel, based on trial counsel's alleged failure to accurately inform him of the maximum sentence he faced in the event he chose to reject a particular plea offer made by the People and was convicted after trial. In support of his claim, which is of a type properly raised within the context of a motion pursuant to CPL

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440.10, the defendant submitted an affidavit alleging certain facts, which, if true, would be sufficient to prevail on that claim (*see People v Mobley*, 59 AD3d 741; *see generally People v Rogers*, 8 AD3d 888, 890-891). Under the circumstances of this case, a hearing was warranted (*see People v Mobley*, 59 AD3d at 741).

MASTRO, J.P., CHAMBERS, SGROI 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