

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

D34149
N/kmb

_____AD3d_____

Argued - February 9, 2012

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2010-07004
2011-02783

DECISION & ORDER

The People, etc., respondent,
v Jairo Aguirre, appellant.

(Ind. No. 09-00348)

Ebanks & Sattler, LLP, New York, N.Y. (Alberto A. Ebanks of counsel), for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Itamar J. Yeger of counsel), for respondent.

Appeals by the defendant (1) from a judgment of the Supreme Court, Rockland County (Kelly, J.), rendered June 14, 2010, convicting him of predatory sexual assault against a child, course of sexual conduct against a child in the first degree, and endangering the welfare of a child, upon a jury verdict, and imposing sentence, and (2), by permission, from an order of the same court dated February 23, 2011, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate the judgment of conviction rendered June 14, 2010.

ORDERED that the judgment and the order are affirmed.

On his direct appeal from the judgment of conviction, and on his appeal, by permission, from the order denying his motion pursuant to CPL 440.10 to vacate that judgment, the defendant contends that he was deprived of the effective assistance of counsel. Based on his claimed limited ability to speak and understand the English language, the defendant argues that his trial counsel was ineffective, inter alia, in failing to challenge at trial the voluntariness of the defendant's statement to law enforcement officers, asking the jury on summation to accept the statement at face

value, and failing to request a jury charge on voluntariness. We disagree. “Viewed objectively, the transcript and the submissions reveal the existence of a trial strategy that might well have been pursued by a reasonably competent attorney” (*People v Satterfield*, 66 NY2d 796, 799; *see People v Evans*, 16 NY3d 571, 575-576, *cert denied* _____ US _____, 132 S Ct 325). Moreover, the Supreme Court properly denied, without a hearing, the defendant’s motion pursuant to CPL 440.10 to vacate the judgment of conviction because the court could determine from the parties’ submissions that the defendant was not deprived of the effective assistance of counsel (*see* CPL 440.30[1], [2], [4]; *People v Satterfield*, 66 NY2d at 799; *People v Canty*, 32 AD3d 1043, 1044; *People v Demetsenare*, 14 AD3d 792, 793).

SKELOS, J.P., DICKERSON, ENG and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court