

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

D34358
O/kmb

_____AD3d_____

Submitted - February 14, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-04647

DECISION & ORDER

The People, etc., respondent,
v Edmund Schafer, appellant.

(Ind. Nos. 939/07, 1566/07)

Salvatore C. Adamo, New York, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marcia R. Kucera and Glenn Green of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the County Court, Suffolk County (Hudson, J.), dated March 24, 2010, which denied, without a hearing, his motion pursuant to CPL 440.10 to vacate two judgments of the same court, both rendered August 2, 2007, convicting him of burglary in the first degree, criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, and menacing in the second degree under Indictment No. 939/07, and conspiracy in the second degree under Indictment No. 1566/07, upon his pleas of guilty, and imposing sentences.

ORDERED that the order is affirmed.

The defendant contends that his judgments of conviction should be vacated pursuant to CPL 440.10 because he was denied the effective assistance of counsel based upon counsel's failure to comply with the defendant's request to file a notice of appeal. However, under the circumstances of this case, the County Court properly denied the defendant's motion pursuant to CPL 440.10, as the defendant's proper recourse is an application for a writ of error coram nobis (*see People v Syville*, 15 NY3d 391, 400-401).

The defendant's remaining contentions are not reviewable in the context of a motion

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pursuant to CPL 440.10 (*see* CPL 440.10[2][c]; *People v Kwok*, 51 AD3d 814, 815; *cf. People v Lard*, 45 AD3d 1331, 1332-1333).

RIVERA, J.P., CHAMBERS, AUSTIN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court