

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

D34432
W/kmb

_____AD3d_____

Submitted - February 23, 2012

THOMAS A. DICKERSON, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2009-05814

DECISION & ORDER

The People, etc., respondent,
v Robert Mims, appellant.

(Ind. No. 3571/02)

Lynn W. L. Fahey, New York, N.Y. (A. Alexander Donn of counsel), for appellant,
and appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Thomas
M. Ross of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the Supreme Court, Kings
County (Chun, J.), entered April 30, 2009, which denied, without a hearing, his motion pursuant to
CPL 440.10 to vacate a judgment of the same court dated June 2, 2004, convicting him of robbery
in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the order is affirmed.

The Supreme Court properly denied, without a hearing, the defendant's motion
pursuant to CPL 440.10 to vacate his conviction. Apart from his own self-serving assertions, he
failed to provide any nonhearsay evidence to contradict the record, which indicates that he received
the effective assistance of counsel with respect to the People's plea offers (*see* CPL 440.30[4][d];
People v Fernandez, 5 NY3d 813; *People v Lane*, 83 AD3d 1118, 1119; *People v Rogers*, 8 AD3d
888, 890-891). In addition, the record does not indicate that the defendant was not present at the
proceeding at which the People's plea offers were communicated to his trial counsel, and he failed
to submit substantial evidence sufficient to overcome the presumption of regularity that attaches to
trial proceedings in support of his claim that his right to be present at the proceeding was violated
(*see People v Andrew*, 1 NY3d 546, 547; *People v Velasquez*, 1 NY3d 44, 48; *People v Bogan*, 78

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AD3d 855, 856; *People v Talbert*, 303 AD2d 696).

DICKERSON, J.P., CHAMBERS, AUSTIN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court