

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

D36379
W/nl

_____AD3d_____

Submitted - September 28, 2012

WILLIAM F. MASTRO, J.P.
PLUMMER E. LOTT
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-11733

DECISION & ORDER

The People, etc., respondent,
v Ricardo Gordon, appellant.

(Ind. No. 2653/09)

Merrick Dammar, Bronx, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Edward A. Bannan of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Kahn, J.), rendered October 28, 2010, convicting him of burglary in the first degree, attempted rape in the first degree, sexual abuse in the first degree, assault in the third degree, endangering the welfare of a child (two counts), and resisting arrest, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim that he was deprived of the constitutional right to the effective assistance of counsel is based, in part, on matter appearing on the record and, in part, on matter outside the record and, thus, constitutes a "mixed claim[]" of ineffective assistance (*People v Maxwell*, 89 AD3d 1108, 1109, quoting *People v Evans*, 16 NY3d 571, 575 n 2, cert denied 132 S Ct 325). It is not evident from the matter appearing on the record that the defendant was deprived of the effective assistance of counsel (*cf. People v Crump*, 53 NY2d 824; *People v Brown*, 45 NY2d 852). Since the defendant's claim of ineffective assistance cannot be resolved without reference to matter outside the record, a CPL 440.10 proceeding is the appropriate forum for reviewing the claim in its entirety (*see People v Freeman*, 93 AD3d 805, 806; *People v Maxwell*, 89 AD3d at 1109; *People v Rohlehr*, 87 AD3d 603, 604).

November 14, 2012

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MASTRO, J.P., LOTT, AUSTIN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court