

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

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Submitted - October 2, 2012

REINALDO E. RIVERA, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

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2011-02705

DECISION & ORDER

The People, etc., respondent,  
v Donell Simmons, appellant.

(Ind. No. 3241/04)

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Lynn W. L. Fahey, New York, N.Y. (Kathleen Whooley of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and  
Amanda M. Aycock of counsel), for respondent.

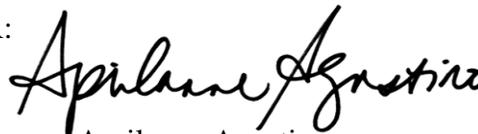
Appeal by the defendant, by permission, from an order of the Supreme Court, Queens  
County (Erlbaum, J.), dated February 2, 2011, which denied, without a hearing, his motion pursuant  
to CPL 440.20 to set aside so much of his sentence as imposed a period of five years of postrelease  
supervision.

ORDERED that the order is affirmed.

The defendant contends that he was deprived of his state and federal constitutional  
rights to effective assistance of counsel on his motion pursuant to CPL 440.20 to set aside so much  
of his sentence as imposed a period of five years of postrelease supervision. Contrary to the  
defendant's contention, a defendant cannot claim a state or federal constitutional right to effective  
assistance of counsel on a motion pursuant to CPL 440.20 to set aside a sentence or a part thereof  
(*see Coleman v Thompson*, 501 US 722, 752; *Pennsylvania v Finley*, 481 US 551, 555; *People v  
Richardson*, 159 Misc 2d 167).

RIVERA, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

November 14, 2012

PEOPLE v SIMMONS, DONELL