

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 68 SSM 14
The People &c.,
Respondent,
v.
Kevin Dogan,
Appellant.

Submitted by Alan J. Williams, for appellant.
Submitted by David A. Heraty, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

We review the summary denial of a CPL article 440 motion under an abuse of discretion standard (*see People v Wright*, 27 NY3d 516, 520 [2016]). It is well settled that a court may deny a CPL 440.10 motion without conducting a hearing if “[t]he motion is based upon the existence or occurrence of facts and the moving papers do not contain sworn allegations substantiating or tending to substantiate all the essential facts” (CPL 440.30 [4] [b]). Here, County Court did not abuse its discretion in denying defendant’s CPL 440.10 motion without a hearing because, under the circumstances presented, defendant failed to sufficiently allege “a reasonable probability that, but for counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial” (*People v Hernandez*, 22 NY3d 972, 975 [2013], quoting *Hill v Lockhart*, 474 US 52, 59 [1985]). Moreover, defendant failed to otherwise “show that the nonrecord facts sought to be established . . . would entitle him to relief” (*People v Satterfield*, 66 NY2d 796, 799 [1985]). Accordingly, County Court did not abuse its discretion in determining that defendant was not entitled to a hearing.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

Decided September 14, 2021