

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

368

KA 19-00237

PRESENT: CENTRA, J.P., PERADOTTO, TROUTMAN, WINSLOW, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BAYRON CASTRO, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (SARA A. GOLDFARB OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER, JR., OF COUNSEL), FOR RESPONDENT.

Appeal, by permission of a Justice of the Appellate Division of the Supreme Court in the Fourth Judicial Department, from an order of the Supreme Court, Onondaga County (Gordon J. Cuffy, A.J.), dated January 8, 2019. The order denied defendant's motion and supplemental motion pursuant to CPL 440.10.

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

Memorandum: Defendant appeals, by permission of this Court, from an order that denied his motion and supplemental motion (motions) pursuant to CPL 440.10 to vacate a judgment convicting him upon his plea of guilty of, inter alia, criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]). We reject defendant's contention that Supreme Court abused its discretion in denying the motions without a hearing (*see generally People v Wright*, 27 NY3d 516, 520 [2016]). Under the circumstances of this case, we conclude that there is no " 'reasonable possibility' " that defendant would have rejected the plea bargain if the People had timely provided the *Brady* material in question (*People v Fuentes*, 12 NY3d 259, 263 [2009], *rearg denied* 13 NY3d 766 [2009]).

Entered: June 11, 2021

Mark W. Bennett
Clerk of the Court