

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

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KA 13-01565

PRESENT: SMITH, J.P., CENTRA, PERADOTTO, SCONIERS, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLIE MIXON, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (TIMOTHY P. MURPHY OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (M. William Boller, A.J.), entered May 16, 2013. The order, insofar as appealed from, denied that part of the motion of defendant seeking DNA testing pursuant to CPL 440.30 (1-a).

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

Memorandum: Defendant appeals from an order insofar as it denied his motion pursuant to CPL 440.30 (1-a) seeking DNA testing of items secured in connection with his 1990 conviction of one count of arson in the first degree and six counts of murder in the second degree (*People v Mixon*, 203 AD2d 909, *lv denied* 84 NY2d 830, *reconsideration denied* 84 NY2d 909). We conclude that Supreme Court properly denied the motion. Defendant failed to establish that if DNA tests had been conducted on certain items from the crime scene and the results had been admitted at his trial that "there exists a reasonable probability that the verdict would have been more favorable to" him (CPL 440.30 [1-a] [a] [1]; see *People v Mixon*, 30 AD3d 1103, 1103, *lv denied* 7 NY3d 903).

Entered: June 12, 2015

Frances E. Cafarell
Clerk of the Court