

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

642

KA 98-05446

PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SANTO GONZALEZ, DEFENDANT-APPELLANT.

SANTO GONZALEZ, DEFENDANT-APPELLANT PRO SE.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (RAYMOND C. HERMAN 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, Erie County (Joseph S. Forma, J.), entered February 23, 1998. The order denied the motion of defendant pursuant to CPL 440.20 to vacate the sentence imposed upon his conviction of, *inter alia*, attempted murder in the first degree.

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

Memorandum: Defendant appeals from an order that denied his motion pursuant to CPL 440.20 seeking to vacate the sentence imposed upon his conviction of, *inter alia*, attempted murder in the first degree (Penal Law §§ 110.00, 125.27 [1] [a] [i]; [b]). We previously affirmed the judgment of conviction upon defendant's appeal therefrom (*People v Gonzalez*, 145 AD2d 900, *lv denied* 73 NY2d 1015). We reject defendant's contention that the sentence was "unauthorized, illegally imposed or otherwise invalid as a matter of law" (CPL 440.20 [1]). Contrary to the contention of defendant, the imposition of consecutive sentences for his conviction of attempted murder and burglary in the second degree (Penal Law § 140.25 [1] [a]) was proper (*see People v Brathwaite*, 63 NY2d 839, 842-843; *cf.* Penal Law § 70.25 [2]). We further conclude that defendant was properly adjudicated a second felony offender. Even assuming, *arguendo*, that the People failed to comply with CPL 400.21, we conclude that strict compliance with the statute was not required inasmuch as defendant received reasonable notice of the accusations against him and was provided an opportunity to be heard with respect to those accusations during the persistent felony offender proceeding (*see People v Bouyea*, 64 NY2d 1140, 1142; *People v Sampson*, 30 AD3d 623, 623-624, *lv denied* 7 NY3d 817).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court