

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

583

KA 14-01638

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, DEJOSEPH, AND CURRAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOVAN L. BARKSDALE, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOVAN L. BARKSDALE, DEFENDANT-APPELLANT PRO SE.

MICHAEL J. FLAHERTY, JR., ACTING DISTRICT ATTORNEY, BUFFALO (NICHOLAS T. TEXIDO 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 Erie County Court (Kenneth F. Case, J.), dated July 29, 2014. The order denied the motion of defendant pursuant to CPL 440.10.

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

Memorandum: Defendant appeals from an order summarily denying his motion pursuant to CPL 440.10 to vacate the judgment convicting him upon a jury verdict of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]), contending in his main and pro se supplemental briefs that he was entitled to a hearing on his claim that he was deprived of effective assistance of counsel at trial. We reject that contention inasmuch as defendant's challenges to his attorney's performance were already raised on direct appeal and rejected by this Court (*People v Barksdale*, 129 AD3d 1497, 1498, 1v denied 26 NY3d 926, reconsideration denied 26 NY3d 1007). Defendant was therefore not entitled to a hearing (see *People v Chelley*, 137 AD3d 1720, 1720-1721).

Entered: June 17, 2016

Frances E. Cafarell
Clerk of the Court