

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

448

KA 14-02169

PRESENT: WHALEN, P.J., SMITH, CENTRA, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANDRE NORWOOD, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS 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, Monroe County (Daniel J. Doyle, J.), entered October 29, 2014. The order denied the motion of defendant to vacate a judgment of conviction.

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

Memorandum: Defendant appeals from an order denying his motion pursuant to CPL 440.10 (1) (h) seeking to vacate the judgment convicting him following a jury trial of murder in the second degree (Penal Law § 125.25 [2]), based upon the alleged denial of effective assistance of counsel. Specifically, defendant alleged that, when he discussed a plea offer of 15 years to life, defense counsel failed to advise him that the maximum sentence, if convicted after trial, was 25 years to life. Following a hearing, Supreme Court determined that defendant's self-serving testimony to that effect was not credible and that he therefore failed to meet the requisite burden of proving by a preponderance of the evidence that he was denied effective assistance of counsel (see CPL 440.30 [6]). "The court's credibility determination is entitled to great weight . . . , and we perceive no basis for reversal on the record before us" (*People v Smith*, 16 AD3d 1081, 1082, *lv denied* 4 NY3d 891; see *People v Campbell*, 106 AD3d 1507, 1508, *lv denied* 21 NY3d 1002).

Entered: April 28, 2017

Frances E. Cafarell
Clerk of the Court