

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

**95/23**

**KA 21-01800**

PRESENT: LINDLEY, J.P., BANNISTER, MONTOUR, AND OGDEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

ORDER

ALVIN KING, DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (SUSAN M. NORMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRADLEY W. OASTLER OF COUNSEL), FOR RESPONDENT.

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Now, upon the Court's own motion,

It is hereby ORDERED that the memorandum and order entered May 5, 2023 (216 AD3d 1410 [4th Dept 2023]) is vacated and the following memorandum and order is substituted therefor:

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.), entered November 17, 2021. The order denied the motion of defendant to vacate a judgment of conviction pursuant to CPL article 440.

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

Memorandum: Defendant appeals, by permission of this Court, from an order that denied his motion pursuant to CPL 440.10 seeking to vacate his judgment of conviction on the ground that he was denied effective assistance of counsel. Specifically, defendant asserted in his motion papers that defense counsel was ineffective in failing to make a pretrial motion to dismiss the indictment on statutory speedy trial grounds (see CPL 30.30). We agree with defendant that Supreme Court erred to the extent that it denied defendant's motion as procedurally barred (see *People v Franklin*, 206 AD3d 1610, 1611-1612 [4th Dept 2022], *lv denied* 38 NY3d 1150 [2022]). We nonetheless conclude that the court properly denied the motion on the merits. Trial counsel "cannot be deemed ineffective for failing to pursue a strategy or defense that had little or no chance of success" (*id.* at

1612; *see generally* *People v Caban*, 5 NY3d 143, 152 [2005]).

Entered: July 26, 2024

Ann Dillon Flynn  
Clerk of the Court