This opinion is uncorrected and subject to revision in the Official Reports. This opinion is not available for publication in any official or unofficial reports, except the New York Law Journal, without approval of the State Reporter or the Committee on Opinions (22 NYCRR 7300.1)

Short Form Order

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM - PART K-8 - QUEENS COUNTY
125-01 QUEENS BLVD. KEW GARDENS, NY 11415

P R E S E N T:
HON. ROBERT CHARLES KOHM, JUSTICE

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD YOUNG, Defendant.	Ind. No. 4424/96 Motion VACATE JUDGMENT OF CONVICTION

The following papers numbered
1 to 4 submitted in this motion.

DONALD YOUNG, PRO SE
FOR THE MOTION

HON. RICHARD A. BROWN, D.A.
BY: TINA LOSCHIAVO, ADA
Opposed

	Papers Numbered
Notice of Motion/Affidavit	1 - 2
Affirmation in Opposition	3
Response to Opposition	4

Upon the foregoing papers, defendant's motion to vacate the judgment of conviction is denied. See the accompanying memorandum.

GLORIA D'AMICO
Clerk

Date: MARCH 20, 2002

ROBERT CHARLES KOHM, J.S.C.

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM : PART K-8

THE PEOPLE OF THE STATE OF NEW YORK	BY: ROBERT CHARLES KOHM, J.
-against-	DATE: March 15, 2002
DONALD YOUNG, Defendant.	IND. NO. 4424/96

Defendant makes this motion for an order vacating the judgment of conviction pursuant to section 440.10 of the Criminal Procedure Law.

Defendant was indicted by a Queens Grand Jury for burglary in the second degree, grand larceny in the third and fourth degree, and criminal mischief in the fourth degree. After a jury trial defendant was convicted of burglary in the second degree, grand larceny in the fourth degree and criminal mischief in the fourth degree. He was sentenced on April 7, 1998, to concurrent prison terms of from sixteen years to life for the burglary, from two to four years for the larceny, and one year for the criminal mischief.

In a decision dated December 18, 2000, the Appellate Department, Second Department, affirmed the conviction and held that the verdict was not against the weight of the evidence (People v Young, 278 AD2d 437). Defendant sought leave to appeal

and on February 22, 2001, the Court of Appeals denied defendant's application (People v Young, 96 NY2d 765).

Defendant now makes this motion to vacate the judgment of conviction. He argues that the People did not offer proof of the value of the stolen property at trial; he was denied an impartial jury since the Court and defense counsel were mistaken as to the amount of peremptory challenges that were left and some of the remaining jurors were victims of burglaries; the People were improperly allowed to elicit testimony of uncharged crimes, and material evidence was adduced at trial that was false.

There is no merit to defendant's argument.

A motion to vacate a judgment of conviction must be denied if there are sufficient facts on the record to have allowed adequate review of the issue on direct appeal but no such appellate determination occurred because defendant unjustifiably failed to raise the issue on appeal (CPL 440.10[2][c]).

A motion to vacate a judgment of conviction should not be "employed as a substitute for direct appeal" when defendant was in a position to raise the issue on appeal, but failed to do so. The issues raises by defendant relate to matters on the record which could have been raised on direct appeal, and decided by the Appellate Division (see, People v Cooks, 67 NY2d 100, 103).

Defendant was not deprived of effective assistance of counsel. What constitutes effective assistance of counsel varies according to the unique circumstances of a particular case. The circumstances must be viewed in totality and, as of the time of representation, to reveal that the attorney provided meaningful representation (People v Wilson, 133 AD2d 179, citing People v Baldi, 54 NY2d 137). Care must be taken "to avoid both confusing true ineffectiveness with mere losing tactics and according undue significance to retrospective analysis" (People v Baldi, supra, at 146).

A contention of ineffective assistance of counsel requires proof of true ineffectiveness rather than mere disagreement with strategies and tactics (People v Benn, 68 NY2d 941). "So long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement will have been met" (People v Baldi, 54 NY2d 137, 147).

To establish a claim of ineffective assistance of counsel, a defendant must demonstrate the absence of strategies or other legitimate explanations for counsel's failure to pursue other claims (People v Rivera, 71 NY2d 705).

In the instant matter, defendant has submitted no such claims which would establish a lack of meaningful representation. The fact that defendant is unhappy with the results of his trial is not a sufficient basis to establish such a lack of meaningful representation (People v Garcia, 149 AD2d 241, affd 75 NY2d 973).

The Court finds that defendant failed to sustain his burden of proving that he was denied the effective assistance of counsel (see, People v Baldi, supra; People v DeFreitas, 213 AD2d 96; People v Hamlin, 153 AD2d 644).

Defendant is attempting to use this motion to vacate the judgment of conviction as a method of appeal. However, this motion may not be used as a vehicle for an additional appeal (People v Howard, 12 NY2d 65, cert denied 374 US 840; People v Shapiro, 3 NY2d 203; People v Silverman, 3 NY2d 200; People v Balsamo, 11 AD2d 1040).

Based on the foregoing, the motion is denied.

Order entered accordingly.

The clerk of the court is directed to mail a copy of this decision and order to the attorney for defendant and to the District Attorney.

ROBERT CHARLES KOHM, J.S.C.