

**Appendix to**  
**Petition for *Writ of Certiorari***

# State of New York Court of Appeals

APPENDIX 001

BEFORE: LESLIE E. STEIN, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Respondent,

MICHAEL F. RAMSEY,

Appellant.


**ORDER  
DENYING  
LEAVE**

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;\*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: *February 19, 2019*  
at Albany, New York

  
Associate Judge

\*Description of Order: Order of the Appellate Division, Fourth Department, entered November 9, 2018, affirming an order of County Court, Monroe County, entered November 28, 2016.



Court of Appeals of New York

**People v. Ramsey**

2019 N.Y. Slip Op. 97460 (N.Y. 2019)

Decided Feb 19, 2019

Stein, J.

Disposition: Applications for Criminal Leave to  
appeal denied

Judge:

Decision Reported Below: 4th Dept: 166 AD3d  
1520 (Monroe)

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87 N.Y.S.3d 772

166 A.D.3d 1520

The PEOPLE of the State of New York, Respondent,

v.

Michael F. RAMSEY, Defendant-Appellant.

No. 2018-07581

1078, KA 17-00161

Supreme Court of New York, Fourth Department

November 9, 2018

Appeal, by permission of a Justice of the Appellate Division of the Supreme Court in the Fourth Judicial Department, from an order of the Monroe County Court (Douglas A. Randall, J.), entered November 28, 2016. The order denied the motion of defendant to set aside his sentence pursuant to CPL 440.20.

ROSALYN B. AKALONU, NEW CITY, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS OF COUNSEL), FOR RESPONDENT.

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, DEJOSEPH, AND TROUTMAN, JJ.

[87 N.Y.S.3d 773] MEMORANDUM AND ORDER

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

[166 A.D.3d 1521] Memorandum: Defendant appeals from an order that denied his motion pursuant to CPL 440.20 seeking to set aside the sentence imposed upon his conviction of, inter alia, three counts each of attempted robbery in the first degree (Penal Law § 110.00, 160.15[2]) and criminal possession of a weapon in the second degree (former § 265.03), and one count of criminal possession of a weapon in the third degree (former § 265.02 [4]). Defendant was sentenced on that conviction to concurrent and consecutive terms of imprisonment amounting to an aggregate term of 25 to 50 years, after being reduced by operation of law (see Penal Law § 70.30[1][e][i], [vi]). Defendant's conviction stems from his armed robbery of a

market, during which he shot a cashier. We previously affirmed the judgment of conviction (*People v. Ramsey*, 199 A.D.2d 985, 608 N.Y.S.2d 923 [4th Dept. 1993], *lv denied* 83 N.Y.2d 857, 612 N.Y.S.2d 389, 634 N.E.2d 990 [1994]), and now conclude that defendant has not met his burden of proving by a preponderance of the evidence that the consecutive sentencing was "unauthorized, illegally imposed or otherwise invalid as a matter of law" (CPL 440.20[1]; see *People v. Young*, 143 A.D.3d 1242, 1243, 39 N.Y.S.3d 336 [4th Dept. 2016], *lv denied* 28 N.Y.3d 1128, 51 N.Y.S.3d 24, 73 N.E.3d 364 [2016]). We therefore conclude that County Court properly denied the motion, and thus we affirm.

Contrary to defendant's contention, the court properly directed that the sentences imposed for the two counts of attempted robbery in the first degree related to the cashier shall run consecutively to the sentence imposed for another count of that crime related to the second victim (see generally Penal Law § 70.25[2]; *People v. Couser*, 28 N.Y.3d 368, 384-385, 45 N.Y.S.3d 301, 68 N.E.3d 26 [2016]; *People v. Salamone*, 89 A.D.3d 961, 962, 932 N.Y.S.2d 532 [2d Dept. 2011], *lv denied* 18 N.Y.3d 928, 942 N.Y.S.2d 467, 965 N.E.2d 969 [2012], *reconsideration denied* 18 N.Y.3d 997, 945 N.Y.S.2d 652, 968 N.E.2d 1008 [2012]). The record establishes that defendant shot the cashier outside the presence of the second victim and, only after that shooting was completed, threatened and demanded money from the second victim while displaying a firearm. It is not illegal to impose consecutive sentences where, as here, each crime "was a separate and distinct act committed against a separate victim" (*Salamone*, 89 A.D.3d at 962, 932 N.Y.S.2d 532; see *People v. Laureano*, 87 N.Y.2d 640, 643, 642 N.Y.S.2d 150, 664 N.E.2d 1212 [1996]).

We further conclude that the remaining consecutive sentences imposed on the criminal possession of a weapon counts were lawful. Defendant failed to show by a preponderance of the evidence that the three counts of criminal possession of a weapon in the second degree (Penal Law § 265.03) involved the same intent, and thus the court also properly denied the motion to that extent (see generally

[166 A.D.3d 1522] *People v. Okafore*, 72 N.Y.2d 81, 87, 531 N.Y.S.2d 762, 527 N.E.2d 245 [1988]; *Young*, 143 A.D.3d at 1243, 39 N.Y.S.3d 336). Additionally,

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inasmuch as criminal possession of a weapon in the third degree (former § 265.02[4]) has no intent element and requires only knowing possession, "the issue of whether



## APPENDIX 004

consecutive sentences require separate unlawful intents ... is not implicated" (*People v. Harris*, 96 A.D.3d 502, 503, 947 N.Y.S.2d 61 [1st Dept. 2012], *aff'd* 21 N.Y.3d 739, 977 N.Y.S.2d 723, 999 N.E.2d 1168 [2013] ). We have examined defendant's remaining contentions and conclude that they are without merit.



**SUPREME COURT OF  
Appellate Division,**

APPENDIX 005

DRK

1078

KA 17-00161

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, DEJOSEPH, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MICHAEL F. RAMSEY, DEFENDANT-APPELLANT.

ROSALYN B. AKALONU, NEW CITY, 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 Monroe County Court (Douglas A. Randall, J.), entered November 28, 2016. The order denied the motion of defendant to set aside his sentence pursuant to CPL 440.20.

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 set aside the sentence imposed upon his conviction of, inter alia, three counts each of attempted robbery in the first degree (Penal Law §§ 110.00, 160.15 [2]) and criminal possession of a weapon in the second degree (former § 265.03), and one count of criminal possession of a weapon in the third degree (former § 265.02 [4]). Defendant was sentenced on that conviction to concurrent and consecutive terms of imprisonment amounting to an aggregate term of 25 to 50 years, after being reduced by operation of law (see Penal Law § 70.30 [1] [e] [i], [vi]). Defendant's conviction stems from his armed robbery of a market, during which he shot a cashier. We previously affirmed the judgment of conviction (*People v Ramsey*, 199 AD2d 985 [4th Dept 1993], lv denied 83 NY2d 857 [1994]), and now conclude that defendant has not met his burden of proving by a preponderance of the evidence that the consecutive sentencing was "unauthorized, illegally imposed or otherwise invalid as a matter of law" (CPL 440.20 [1]; see *People v Young*, 143 AD3d 1242, 1243 [4th Dept 2016], lv denied 28 NY3d 1128 [2016]). We therefore conclude that County Court properly denied the motion, and thus we affirm.

Contrary to defendant's contention, the court properly directed that the sentences imposed for the two counts of attempted robbery in the first degree related to the cashier shall run consecutively to the



sentence imposed for another count of that crime related to the second victim (see generally Penal Law § 70.25 [2]; *People v Couser*, 28 NY3d 368, 384-385 [2016]; *People v Salamone*, 89 AD3d 961, 962 [2d Dept 2011], lv denied 18 NY3d 928 [2012], reconsideration denied 18 NY3d 997 [2012]). The record establishes that defendant shot the cashier outside the presence of the second victim and, only after that shooting was completed, threatened and demanded money from the second victim while displaying a firearm. It is not illegal to impose consecutive sentences where, as here, each crime "was a separate and distinct act committed against a separate victim" (*Salamone*, 89 AD3d at 962; see *People v Laureano*, 87 NY2d 640, 643 [1996]).

We further conclude that the remaining consecutive sentences imposed on the criminal possession of a weapon counts were lawful. Defendant failed to show by a preponderance of the evidence that the three counts of criminal possession of a weapon in the second degree (Penal Law § 265.03) involved the same intent, and thus the court also properly denied the motion to that extent (see generally *People v Okafore*, 72 NY2d 81, 87 [1988]; *Young*, 143 AD3d at 1243). Additionally, inasmuch as criminal possession of a weapon in the third degree (former § 265.02 [4]) has no intent element and requires only knowing possession, "the issue of whether consecutive sentences require separate unlawful intents . . . is not implicated" (*People v Harris*, 96 AD3d 502, 503 [1st Dept 2012], affd 21 NY3d 739 [2013]). We have examined defendant's remaining contentions and conclude that they are without merit.

TAKE NOTICE that the within is a true copy of  
an ORDER duly filed and entered in the office of  
the Clerk of the Court, on the 9<sup>th</sup> day of November  
20 18

Yours, etc.,

Monroe County District Attorney  
47 South Fitzhugh Street  
Rochester, New York 14614

Dated: 11-19-18

Entered: November 9, 2018

Mark W. Bennett  
Clerk of the Court



STATE OF NEW YORK  
COUNTY COURT

COUNTY OF MONROE

PEOPLE OF THE STATE OF NEW YORK,

-vs-

MICHAEL F. RAMSEY,

Ind. No. 91/0337

Defendant.

APPEARANCES: SANDRA DOORLEY, ESQ., DISTRICT ATTORNEY  
Daniel Gross, Esq., of counsel  
Attorney for People

MICHAEL F. RAMSEY  
Pro Se

**DECISION AND ORDER**

DOUGLAS A. RANDALL, J.

This is a decision on a motion by defendant to set aside sentence (CPL § 440.20).

The defendant was convicted and sentenced to the following counts of the indictment after a nonjury trial:

- Count 1: Attempted Murder in the First Degree  
Victim: Robert Morgan  
Sentence: 12 ½ to 25 years
- Count 2: Attempted Robbery in the First Degree  
Victim: Robert Morgan  
Sentence: 7 ½ to 15 years
- Count 3: Attempted Robbery in the First Degree  
Victim: Robert Morgan  
Sentence: 7 ½ to 15 years
- Count 4: Assault in the First Degree  
Victim: Robert Morgan  
Sentence: 7 ½ to 15 years

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- Count 5: Assault in the First Degree  
Victim: Robert Morgan  
Sentence: 7 ½ to 15 years
- Count 6: Criminal Possession of a Weapon in the Second Degree  
Victim: Robert Morgan  
Sentence: 7 ½ to 15 years
- Count 7: Attempted Robbery in the First Degree  
Victim: Sonia Morgan  
Sentence: 7 ½ to 15 years
- Count 8: Criminal Possession of a Weapon in the Second Degree  
Victim: Sonia Morgan  
Sentence: 7 ½ to 15 years
- Count 10: Criminal Possession of a Weapon in the Second Degree  
Victim: Adrian Singleton  
Sentence: 7 ½ to 15 years
- Count 11: Criminal Possession of a Weapon in the Third Degree  
Sentence: 3 ½ to 7 years
- Count 12: Resisting Arrest  
Sentence: 1 year
- Count 13: Attempted Escape in the First Degree  
Sentence: 2 to 4 years

The defendant was sentenced on December 4, 1991 by Monroe County Court Judge, Hon. John Connell. The court determined at sentencing that the sentences for counts one through six in the indictment are to run concurrent with each other. Counts seven and eight are to run concurrent with each other and consecutive to counts one through six. Counts ten through twelve are to run consecutive to counts one through six and seven and eight, and they are to run consecutive with each other.

The defendant argues in his motion that his sentences are illegal because they should not run consecutively to each other. Specifically, the defendant argues that counts



three and seven, and counts six and eight arise from the same criminal act. The defendant also argues that counts six, eight, ten and eleven consist of conduct relating to a continuous course of conduct during a single act of gun possession. The court has reviewed defendant's motion and the People's response to the motion. After review, the court determines that a hearing is not necessary (*see* CPL § 440.30[4]). The following constitutes the court's decision and order denying the defendant's motion to set aside sentence.

The law provides that if a sentence is unauthorized, illegal, or invalid as a matter of law then a trial court has authority to change a defendant's sentence (*see* CPL § 440.20 [1]). The only issue to be decided in this motion is whether the defendant's consecutive sentences are legal. Concurrent sentences must be imposed "[w]hen more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other" (Penal Law § 70.25 [2]). However, the law allows judicial discretion to impose consecutive sentences when the acts or omissions of a defendant are separate and distinct acts (*see People v Laureano*, 87 NY2d 640 [1996]; *People v Walker*, 117 AD3d 886 [2<sup>nd</sup> Dept 2014]; *People v Holmes*, 92 AD3d 957 [2<sup>nd</sup> Dept 2012]).

The defendant argues in his motion that his sentence is illegal because his crimes constitute a single, inseparable act. This court disagrees. This court has examined the statutory definitions of the crimes committed by the defendant. After review, this court determines that the People have presented sufficient evidence to support the court's determination to use its judicial discretion to sentence the defendant to consecutive



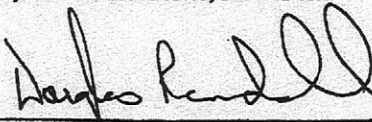
sentences. Even if this court agreed with the defendant that the robberies and gun possession involving Robert Morgan and Sonia Morgan are part of an extended single transaction, the crimes committed by the defendant are separate offenses and they were committed through separate acts. Courts have discretion to impose consecutive sentences when separate offenses are committed through separate acts, even when such acts are part of a single transaction (*see People v Rodriguez*, 25 NY3d 238 [2015]). The remaining acts committed by the defendant are clearly separate and distinct acts, and the convictions for such acts do not require concurrent sentencing.

After reviewing the defendant's motion, the court concludes that the defendant's arguments do not set forth grounds to determine that the defendant's sentence is unauthorized, illegal or invalid as a matter of law (*see* CPL 440.20). Therefore, this court must deny the defendant's motion to set aside the defendant's sentence.

Accordingly, the court denies the defendant's motion to set aside sentence in all respects.

This shall constitute the decision and order of this court.

Dated this 22<sup>nd</sup> day of November, 2016 at Rochester, New York.

  
\_\_\_\_\_  
DOUGLAS A. RANDALL  
COUNTY COURT JUDGE



**CERTIFICATE OF THE HONORABLE GERALD J. WHALEN, DATED APRIL 12, 2017,  
GRANTING LEAVE TO APPEAL TO THE APPELLATE DIVISION [A-138-A-139]**

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

RAMSEY, MICHAEL F.  
CPL 460.15 - GRANT  
APRIL 2017

KA 17-00161

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

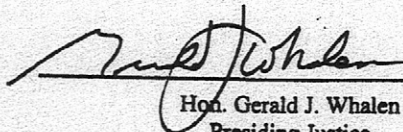
V

MICHAEL F. RAMSEY, DEFENDANT-APPELLANT.

Indictment No.: 91/0337

I, Gerald J. Whalen, Presiding Justice of the Appellate Division, Fourth Judicial Department, do hereby certify that upon the motion of defendant for a certificate granting leave to appeal pursuant to CPL 460.15 from an order of the Monroe County Court entered November 28, 2016, there are questions of law or fact which ought to be reviewed by this Court, and permission to appeal is hereby granted.\*

DATED: 4/12/17

  
Hon. Gerald J. Whalen  
Presiding Justice

\* Note: Within 15 days after issuance of this certificate, a copy of this certificate and a notice of appeal must be filed with the clerk of the court in which the order being appealed was entered (*see*, CPL 460.10 [4] [b]).

**Supreme Court**  
**APPELLATE DIVISION**  
**Fourth Judicial Department**  
**Clerk's Office, Rochester, N.Y.**

}

*I, FRANCES E. CAFARELL, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.*



*IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this*

**APR 18 2017**

*Frances E. Cafarell*  
Clerk



## CERTIFICATE OF CONVICTION, DATED DECEMBER 4, 1991

STATE OF NEW YORK  
COUNTY OF MONROE  
COURT COUNTY COURT

LIBER: 115  
NYSID: 47905342  
SS# 126-52-3749

PAGE: 48  
D.O.B. 05-27-65  
IND #: 91-0337  
INDEX #: 4807-91

THE PEOPLE OF THE STATE OF NEW YORK

-VS-

MICHAEL RAMSEY

Defendant(s)

CERTIFICATE OF  
CONVICTION

I certify that the above named defendant was convicted in this court of the offense of ATT MURDER 2ND DEG., ATT.ROB 1ST DEG., ASSLT 1ST DEG., CPW 2ND DEG., CPW 3RD DEG., RESISTING ARREST, ATT ESCAPE 1ST DEG. in violation of section(s) 125.25 of the PENAL LAW, 160.15 of the PENAL LAW, 120.10 of the PENAL LAW, 265.03 of the PENAL LAW, 265.02 of the PENAL LAW, 205.30 of the PENAL LAW, 205.15 of the PENAL LAW of the State of New York and judgment was entered the 4 DAY OF December, 1991 before the HON. JOHN J. CONNELL, a

JUDGE of this Court and the defendant was SENTENCED:

~~Indeterminate Term, New York State Dept of Corrections~~ - as follows:

1st Ct - Att Murder 2nd	12 1/2 - 25 yrs	Cts 1-6 are concurrent
2nd Ct - Att Rob 1st	7 1/2 - 15 yrs	Mandatory discharge imposed \$152.00
3rd Ct - Att Rob 1st	7 1/2 - 15 yrs	Before release on parole: Appeal rights
4th Ct - Att 1st	7 1/2 - 15 yrs	fully given by the Court
5th Ct - Att 1st	7 1/2 - 15 yrs	2nd violent felony offender 400.15 CPL
6th Ct - CPW 2nd	7 1/2 - 15 yrs	So certified:

Dated at Rochester, New York  
this 4 day of December, 1991

Clerk

SENT CT RPT:

POST CONVICTION INFORMATION:

7th Ct - Att Rob 1st	7 1/2 - 15 yrs	Concurrent to each other but Consecutive to Cts 1-6
8th Ct - CPW 2nd	7 1/2 - 15 yrs	
10th Ct - CPW 2nd	7 1/2 - 15 yrs	Consecutive to above
11th Ct - CPW 3rd	3 1/2 - 7 yrs	Consecutive to above
12th Ct - Resisting Arrest	one yr. Min City Jail	Consecutive to above
13th Ct - Att Escape 1st	2-4 yrs	Consecutive to above

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# APPENDIX 014

## SENTENCE & COMMITMENT STATE OF NEW YORK

*Duplicate Original*

DECEMBER 4, 1991

County COURT

Monroe  
COUNTY

HON. John J. Connell

THE PEOPLE OF THE STATE OF NEW YORK  
-VS-

Indictment Number 0337/91 Date 10/23/91

Indicted for Att. Murder 2nd, Att. Robber

1st (2cts), Assault 1st (2cts),

Criminal Possession Weapon 2nd (3c

CPW 3rd, RA, Att. Escape 1st

Date of trial 1/17/91

Michael Ramsey

DEFENDANT DATA: m 26 AGE 5/27/65  
DATE OF BIRTH

THE ABOVE NAMED DEFENDANT HAVING BEEN

XX- convicted of the crime(s) of Att. Murder 2nd, Att. Robbery 1st (2cts), Aslt. 1st  
(2cts), Att. Robb. 1st, CPW 2nd (2cts), CPW 3rd, RA, Att. Escape 1st  
found to be a youthful offender.

UNDER THE ABOVE-DESIGNATED INDICTMENT, IT IS ORDERED THAT THE SAID DEFENDANT BE AND HEREBY IS (COMMITTED TO)  
(SENTENCED TO):

to be held until the judgment of this Court is satisfied.

an indeterminate term of imprisonment which shall have a maximum term of see attached sheet

and a minimum term of

XX- a mandatory surcharge in the amount of \$100.00 and has (has not) been paid.

XX- as a second felony offender.

a definite term of imprisonment which shall have a term of

a fine of dollars.

that the sentence herein shall run concurrently consecutively with the sentence imposed on the defendant under the conviction  
upon the indictment numbered

AND THAT THE SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE

XX- Department of Correctional Services of the State of New York until released in accordance with the law, and

XX- being a male person twenty-one or older, the Monroe County Sheriff is directed to deliver him  
to the NYS Dept. of Corrections at Wende, NY

being a male person more than sixteen and less than twenty-one years old, the  
is directed to deliver him to the

being a female person, the is directed to deliver her to Bedford Hills Correctional  
Facility located in Bedford Hills, New York.

County Jail.

REMARKS: The Defendant having been found guilty by (verdict) (plea) of a (felony) (misdemeanor)

to wit: Att. Murder 2nd, Att. Robb. 1st (2cts), Aslt 1st (2cts), Att.  
Robb 1st, CPW 2nd & 3rd, RA, Att. Escape 1st

WHEREUPON it is ORDERED and ADJUDGED by the Court, that the said Michael Ramsey

for the (felony) (misdemeanor) should be sentenced to be committed to

NYS Dept. of Corrections Wende, NY for a term of

124-25 years and 74-15 years consecutive (see attached sheet)

A TRUE EXTRACT FROM THE MINUTES.

12/4/91

(DATE OF COURT)

Lorraine Monroe

(SIGNATURE)

David A. Chick

(TITLE)

*Duplicate Original*

Third Copy Forwarded to Board of Elections

COURT COPY



A-100

<u>COUNT</u>	<u>CHARGE</u>	<u>SENTENCE</u>
I	Att. Murder 2nd	12½-25 years
II	Att. Robbery 1st	7½-15 years
III	Att. Robbery 1st	7½-15 years
IV	Assault 1st	7½-15 years
V	Assault 1st	7½-15 years
VI	Criminal Possession Weapon 2nd	7½-15 years
VII	Att. Robbery 1st	7½-15 years
VIII	Criminal Possession Weapon 2nd	7½-15 years
X	Criminal Possession Weapon 2nd	7½-15 years
XI	Criminal Possession Weapon 3rd	3½-7 years
XII	Resisting Arrest	1 year
XIII	Att. Escape 1st	2-4 years

Counts I thru VI to run concurrent; Counts VII & VIII to run concurrent; (Counts I thru VI), (Counts VII & VIII), Count X, Count XI, Count XII and Count XIII to run consecutive



## New York Statutes

## Penal

## Part 2. SENTENCES

## Title E. SENTENCES

## Article 70. SENTENCES OF IMPRISONMENT

*Current through Register Vol. 41, No. 19, May 8, 2019*

**§ 70.25. Concurrent and consecutive terms of imprisonment**

1.

Except as provided in subdivisions two, two-a and five of this section, when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

(a)

**[Effective until 9/1/2020]** An indeterminate or determinate sentence shall run concurrently with all other terms; and

(a)

**[Effective 9/1/2020]** An indeterminate sentence shall run concurrently with all other terms; and

(b)

A definite sentence shall run concurrently with any sentence imposed at the same time and shall be consecutive to any other term.

2.

When more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the sentences, except if one or more of such sentences is for a violation of section 270.20 of this chapter, must run concurrently.

2-a.

**[Effective until 9/1/2020]** When an indeterminate or determinate sentence of imprisonment is imposed pursuant to section 70.04, 70.06, 70.07, 70.08, 70.10, subdivision three or four of section 70.70, subdivision three or four of section 70.71 or subdivision five of section 70.80 of this article, or is imposed for a class A-I felony pursuant to section 70.00 of this article, and such person is subject to an undischarged indeterminate or determinate sentence of imprisonment imposed prior to the date on which the present crime was committed, the court must impose a sentence to run consecutively with respect to such undischarged sentence.

2-a.

**[Effective 9/1/2020]** When an indeterminate or determinate sentence of imprisonment is imposed pursuant to section 70.04, 70.06, 70.07, 70.08, 70.10, subdivision three or four of section 70.70, subdivision three or four of section 70.71 or subdivision five of section 70.80 of this article, or is imposed for a class A-I felony pursuant to section 70.00 of this article, and such person is subject to an undischarged indeterminate sentence of imprisonment imposed prior to the date on which the present crime was committed, the court must impose a sentence to run consecutively with respect to such undischarged sentence.

2-b.

**[Effective until 9/1/2020]** When a person is convicted of a violent felony offense committed after arraignment and while released on recognizance or bail, but committed prior to the imposition of sentence on a pending felony charge, and if an indeterminate or determinate sentence of imprisonment is imposed in each case, such sentences shall run consecutively. Provided, however, that the court may, in the interest of justice, order a sentence to run concurrently in a situation where consecutive sentences are required by this subdivision if it finds either mitigating circumstances that bear directly upon the manner in which the crime was committed or, where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. The defendant and the district attorney shall have an opportunity to present relevant information to assist the court in making this determination and the court may, in its discretion, conduct a hearing with respect to any issue bearing upon such determination. If the court determines that consecutive sentences should not be ordered, it shall make a statement on the record of the facts and circumstances upon which



**New York Statutes****Criminal Procedure****Part 2. THE PRINCIPAL PROCEEDINGS****Title M. PROCEEDINGS AFTER JUDGMENT****Article 440. POST-JUDGMENT MOTIONS***Current through Register Vol. 41, No. 19, May 8, 2019***§ 440.20. Motion to set aside sentence; by defendant**

1.

At any time after the entry of a judgment, the court in which the judgment was entered may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law. Where the judgment includes a sentence of death, the court may also set aside the sentence upon any of the grounds set forth in paragraph (b), (c), (f), (g) or (h) of subdivision one of section 440.10 as applied to a separate sentencing proceeding under section 400.27, provided, however, that to the extent the ground or grounds asserted include one or more of the aforesaid paragraphs of subdivision one of section 440.10, the court must also apply subdivisions two and three of section 440.10, other than paragraph (d) of subdivision two of such section, in determining the motion. In the event the court enters an order granting a motion to set aside a sentence of death under this section, the court must either direct a new sentencing proceeding in accordance with section 400.27 or, to the extent that the defendant cannot be resentenced to death consistent with the laws of this state or the constitution of this state or of the United States, resentence the defendant to life imprisonment without parole or to a sentence of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole. Upon granting the motion upon any of the grounds set forth in the aforesaid paragraphs of subdivision one of section 440.10 and setting aside the sentence, the court must afford the people a reasonable period of time, which shall not be less than ten days, to determine whether to take an appeal from the order setting aside the sentence of death. The taking of an appeal by the people stays the effectiveness of that portion of the court's order that directs a new sentencing proceeding.

2.

Notwithstanding the provisions of subdivision one, the court must deny such a motion when the ground or issue raised thereupon was previously determined on the merits

upon an appeal from the judgment or sentence, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue.

3.

Notwithstanding the provisions of subdivision one, the court may deny such a motion when the ground or issue raised thereupon was previously determined on the merits upon a prior motion or proceeding in a court of this state, other than an appeal from the judgment, or upon a prior motion or proceeding in a federal court, unless since the time of such determination there has been a retroactively effective change in the law controlling such issue. Despite such determination, however, the court in the interest of justice and for good cause shown, may in its discretion grant the motion if it is otherwise meritorious.

4.

An order setting aside a sentence pursuant to this section does not affect the validity or status of the underlying conviction, and after entering such an order the court must resentence the defendant in accordance with the law.

**Cite as N.Y. Crim. Proc. Law § 440.20**



**New York Statutes  
Criminal Procedure**

**Part 2. THE PRINCIPAL PROCEEDINGS  
Title M. PROCEEDINGS AFTER JUDGMENT  
Article 440. POST-JUDGMENT MOTIONS**

*Current through Register Vol. 41, No. 19, May 8, 2019*

**§ 440.30. [Effective Until 1/1/2020] Motion to vacate judgment and to set aside sentence; procedure**

1. (a) A motion to vacate a judgment pursuant to section 440.10 of this article and a motion to set aside a sentence pursuant to section 440.10 of this article must be made in writing and upon reasonable notice to the people. Upon the motion, a defendant who is in a position adequately to raise more than one ground should raise every such ground upon which he or she intends to challenge the judgment or sentence. If the motion is based upon the existence or occurrence of facts, the motion papers must contain sworn allegations thereof, whether by the defendant or by another person or persons. Such sworn allegations may be based upon personal knowledge of the affiant upon information and belief, provided that in the latter event the affiant must state the sources of such information and the grounds of belief. The defendant may further submit documentary evidence or information supporting or tending to support the allegations of the moving papers. The people may file with the court, and in such case must serve a copy thereof upon the defendant or his or her counsel, any answer denying or admitting any or all of the allegations of the motion papers, and may further submit documentary evidence or information refuting or tending to refute such allegations. After all papers of both parties have been filed, and after all documentary evidence or information, if any, has been submitted, the court must consider the same for the purpose of ascertaining whether the motion is determinable without a hearing to resolve questions of fact.
- (b) In conjunction with the filing or consideration of a motion to vacate a judgment pursuant to section 440.10 of this article by a defendant convicted after a trial, in cases where the court has ordered an evidentiary hearing upon such motion, the court may order that the people produce or make available for inspection property, as defined in subdivision three of section 240.10 of this part, in its possession, custody or control that was secured in connection with the investigation or prosecution of the defendant upon credible allegations by the defendant and a finding by the court that such property, if obtained, would be probative to the determination of defendant's actual innocence, and the request is reasonable. The court shall deny or limit such a request upon a finding that such a request, if granted, would threaten the integrity or chain of custody of property or the integrity of the processes or functions of a laboratory conducting DNA testing, pose a harm, intimidation, embarrassment, reprisal, or other substantially negative consequences to any person, undermine the proper functioning of law enforcement including the confidentiality of informants, or on the basis of any other factor identified by the court in the interests of justice or public safety. The court shall further ensure that any property produced pursuant to this paragraph is subject to a protective order, where appropriate. The court shall deny any request made pursuant to this paragraph where:
  - (i) (1) the defendant's motion pursuant to section 440.10 of this article does not seek to demonstrate his or her actual innocence or offense or offenses of which he or she was convicted that are the subject of the motion, or (2) the defendant has not presented credible allegations and the court has not found that such property, if obtained, would be probative to the determination of the defendant's actual innocence and that the request is reasonable;
  - (ii) the defendant has made his or her motion after five years from the date of the judgment of conviction; provided, however, that the limitation period shall be tolled for five years if the defendant is in custody in connection with the conviction that is the subject of his or her motion, and provided further that, notwithstanding such limitation periods, the court may consider the motion if the defendant has shown: (A) that he or she has been pursuing his or her rights diligently and that some extraordinary circumstance prevented the timely filing of the motion; (B) that the facts upon which the motion is predicated were unknown to the defendant or his or her attorney and could not have been ascertained by the exercise of due diligence prior to the expiration of the statute of limitations; (C) considering all circumstances of the case including but not limited to evidence of the defendant's guilt, the impact of granting such motion upon public confidence in the criminal justice system, or upon the safety or welfare of the community, and the defendant's diligence in seeking to obtain the requested property or related relief, the interests of justice would be served by considering the motion;
  - (iii) the defendant is challenging a judgment convicting him or her of an offense that is not a felony defined in section 10.00 of the law; or
  - (iv) upon a finding by the court that the property requested in this motion would be available through other means through reasonable efforts by the defendant to obtain such property.
- 1-a. (a) (1) Where the defendant's motion requests the performance of a forensic DNA test on specified evidence, and upon the court's determination that any evidence containing deoxyribonucleic acid ("DNA") was secured in connection with the trial resulting in the judgment, the court shall grant the application for forensic DNA testing of such evidence upon its determination that if a DNA test



**N.Y. Penal Law § 265.03 Criminal possession of a weapon in the second degree.**

A person is guilty of criminal possession of a weapon in the second degree when:

(1) with intent to use the same unlawfully against another, such person:

(a) possesses a machine-gun; or

(b) possesses a loaded firearm; or

(c) possesses a disguised gun; or

(2) such person possesses five or more firearms; or

(3) such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business.

Criminal possession of a weapon in the second degree is a class C felony.



APPENDIX 020  
LAWS OF NEW YORK, 1974

**§ 265.03 *Criminal possession of a weapon in the second degree.***

*A person is guilty of criminal possession of a weapon in the second degree when he possess a machine-gun or loaded firearm with intent to use the same unlawfully against another.*

*Criminal possession of a weapon in the second degree is a class C felony.*