

State of New York
Court of Appeals

BEFORE: HON. MICHAEL J. GARCIA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

STEPHEN ROSA,

- against -

Respondent,

Appellant.

**ORDER
DISMISSING
LEAVE**

Ind. No. 2014-0482

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

UPON the papers filed and due deliberation, it is
ORDERED that the application is dismissed because the order sought to be appealed from is not appealable under CPL § 450.90(1).

Dated: 10/12/21



Associate Judge

*Description of Order: Order of a Justice of the Appellate Division, Fourth Department, dated July 15, 2021, denying leave to appeal from an order of County Court, Monroe County, dated January 15, 2021.

STATE OF NEW YORK
COUNTY COURT

COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

Respondent,

v.

Ind. No. 2014-0482

STEPHEN ROSA,

Defendant.

APPEARANCES:

For the People: SANDRA DOORLEY, ESQ.
MONROE COUNTY DISTRICT ATTORNEY
Derek Harnsberger, Esq., Of Counsel
Monroe County District Attorney's Office
47 South Fitzhugh Street
Rochester New York 14614

For Defendant: Stephen Rosa, DIN #14-B-3591, *pro se*
Eastern Correctional Facility
PO Box 338
Napanoch, New York 12458

DECISION & ORDER
HON. MEREDITH A. VACCA

Petitioner moves, pursuant to CPL 440.20, to set aside the sentence imposed on a judgment convicting him, upon his guilty plea in 2014, of manslaughter in the first degree (Penal Law § 125.20 [1]). Upon his plea, Defendant was sentenced to the agreed upon determinate term of 19 years

imprisonment, together with 5 years post-release supervision.

CPL 440.20 (1) authorizes a court to set aside a sentence where it "was unauthorized, illegally imposed or otherwise invalid as a matter of law" at the time it was imposed. As the People correctly point out, Defendant's determinate sentence of 19 years is within the 5 to 25 year range authorized by Penal Law §§ 70.02 (3) (a) and 70.00 (6). Thus, on its face, Defendant's sentence does not appear to be "unauthorized, illegally imposed or otherwise invalid (CPL 440.20 [1]). Defendant nonetheless argues that the sentence was illegally imposed because the Court failed to consider a youthful offender adjudication as required by CPL 720.20 (1). That section provides that, where a defendant is eligible for youthful offender treatment, "the court must determine whether or not the eligible youth is a youthful offender." The court's duty to undertake such an analysis is mandatory, "even where the defendant fails to request it, or agrees to forgo it as part of a plea bargain" (*People v Rudolph*, 21 NY3d 497, 501 [2013]).

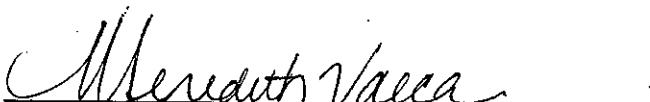
The problem with Defendant's argument is that it is not directed at his sentence, which is the proper subject of a motion pursuant to CPL 440.20. Rather, the failure to follow the mandate of CPL 720.20 goes to the judgment of conviction itself, inasmuch as such a finding would necessitate the judgment of conviction being vacated and replaced by a youthful offender adjudication (see CPL 720.20 [3]). Such an attack on the judgment, as opposed to simply the sentence, must be made pursuant to CPL 440.10, not CPL 440.20. And a

motion pursuant to CPL 440.10 is subject to various procedural bars. As relevant here, such a motion "must be denied, if the Trial Court record is sufficient to have permitted review on direct appeal of the issue presented by the CPL § 440.10 motion" (*People v Ferguson*, 119 AD2d 338, 343 [1st Dept 1986]). As the People correctly contend, that is the case here. In making his argument, Defendant points to nothing that is *de hors* the record; indeed, Defendant actually relies on the record - i.e. the sentencing minutes, and the lack of youthful offender consideration contained therein. Thus, Defendant's contention that the court failed to properly consider youthful offender treatment pursuant to CPL 720.20 is not subject to review by way of a CPL Article 440 motion (*Ferguson*, 119 AD2d at 343-344; see *People v Ortiz*, 54 Misc 3d 1215(A), 2017 WL 593146 at *4 [Crim Ct 2017]).

Accordingly, it is hereby

ORDERED that Defendant's motion is DENIED.

Dated: January 15, 2021


Hon. Meredith A. Vacca
County Court Judge

**Additional material
from this filing is
available in the
Clerk's Office.**