

APPLICATION EXHIBITS

EXHIBIT 1

State of New York Court of Appeals

BEFORE: HON. JANET DiFIORE, Chief Judge

THE PEOPLE OF THE STATE OF NEW YORK,

-against- Respondent,

**ORDER
DENYING
LEAVE**

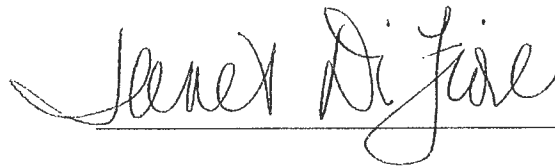
RAUL ALVAREZ, Appellant.

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: 7/21/22



Chief Judge

*Description of Order: Order of the Appellate Division, First Department, entered May 24, 2022, affirming a judgment of the Supreme Court, New York County, rendered March 24, 2017, and an order, same court entered on or about January 15, 2021.

EXHIBIT 2

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Acosta, P.J., Manzanet-Daniels, Mazzarelli, Singh, González, JJ.

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15835A

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

Ind. No. 5347/15
Case Nos. 2017-02554
2018-1139

-against-

RAUL ALVAREZ,
Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Mark W. Zeno of counsel),
for appellant.

Alvin L. Bragg, Jr., District Attorney, New York (Grace Vee of counsel), for respondent.

Judgment, Supreme Court, New York County (Gilbert C. Hong, J.), rendered March 24, 2017, convicting defendant, after a jury trial, of assault in the third degree, two counts of aggravated criminal contempt and six counts of criminal contempt in the first degree, and sentencing him, as a second felony offender, to an aggregate term of 3½ to 7 years; and order, same court and Justice, entered on or about January 15, 2021, which denied defendant’s CPL 440.10 motion to vacate the judgment, unanimously affirmed.

After a hearing, the court correctly denied defendant’s motion to vacate the judgment. Defendant did not establish a violation of *McCoy v Louisiana* (584 US —, 138 S Ct 1500 [2018]), because he failed to prove by a preponderance of the evidence that he insisted at trial that his attorney refrain from admitting guilt of third-degree assault and the accompanying contempt charges. There is no basis for disturbing the court’s credibility determinations. The attorney made these strategic concessions in a successful

effort to prevent his client from being convicted of second-degree assault, which would have resulted in a life sentence as a persistent violent felony offender. Although, at various stages of the case, defendant asserted his complete innocence of all charges, he has not established that he ever made an “express objection” (*id.* at 1511) to any concession of partial guilt, and counsel was not obligated to obtain defendant’s express consent (*see Florida v Nixon*, 543 US 175, 189 [2004]).

Defendant did not preserve his challenge to the court’s interested witness charge, which followed the Criminal Jury Instructions, and we decline to review it in the interest of justice. As an alternative holding, we reject it on the merits (*see e.g. People v Boone*, 146 AD3d 458, 460 [1st Dept 2017], *lv denied* 29 NY3d 1029 [2017]).

Defendant is not entitled to a new trial based on the People’s impeachment use of the existence (but not the facts) of his 2016 burglary conviction, which was subsequently reversed on appeal, because there is no reasonable possibility that the use of this conviction contributed to the verdict (*see People v Robinson*, 154 AD3d 490, 491-92 [1st Dept 2017], *lv denied* 30 NY3d 1108 [2018]). Defendant was impeached by way of additional convictions, and there was overwhelming evidence that contradicted his testimony and established his guilt.

Likewise, defendant is not entitled to be resentenced. Unlike the situation in

Robinson (id.), defendant has not established that the later-reversed conviction influenced his sentence.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 24, 2022

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court