

Ex. 40

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Dominic Franza,

Defendant.

AFFIRMATION IN
RESPONSE TO DEFENDANT'S
C.P.L. §440.10(1)

Ind. No.

Gregory Sheindlin, an attorney admitted to practice before the Courts of this State, and affirms under penalty of perjury that:

1. I am the Assistant District Attorney in New York County assigned to this case and am familiar with its facts.

2. This affirmation is submitted in response to defendant's C.P.L. §440.10(1) motion in which defendant seeks vacation of his conviction.

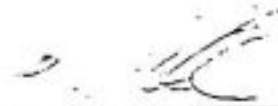
3. The defendant's motion should be denied for two reasons. One, the defendant's motion is untimely, and second, the defendant's motion is without merit.

Defendant's motion is untimely due to a pending appeal, see C.P.L. §440.10(2)(b), or otherwise due to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period, see C.P.L. §440.10(2)(c).

Second, the defendant's motion sets forth no legal precedents justifying the requested legal remedy. Additionally, the defendant's motion is confusing, factually inaccurate and without merit.

Wherefore, it is respectfully requested that, except as consented to herein, defendant's motion should be denied.

Respectfully submitted



Gregory Sheindlin
Assistant District Attorney
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Dated: New York, New York
September 14, 1993

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Domitile Franza,

Defendant.

AFFIRMATION IN RESPONSE TO DEFENDANT'S
C.P.L. §440.10(1) MOTION

Ind. No.

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