

APPELLATE DIVISION

Guilty Pleas – Immigration Cases

***People v Marroquin*, 8/21/19 – CPL 440.10 / No IAC**

The defendant appealed from a Westchester County Supreme Court order, which granted the People’s motion to reinstate a 2014 order denying his CPL 440.10 motion to vacate a judgment of conviction. The **Second Department** affirmed. In 2003, the defendant, a native of Guatemala, pleaded guilty to 1st degree criminal contempt. He later sought to vacate the judgment based on ineffective assistance, contending that counsel erroneously said that he would not be subject to deportation if he pled guilty. Supreme Court denied the motion, finding that the defendant had not shown prejudice, since deportation proceedings had been initiated because he had not been legally admitted to the U.S. The defendant moved for leave to renew, asserting that at the time of the conviction, he had a valid work permit that allowed him to remain in the U.S. In a 2016 order, the trial court found that the defendant was entitled to a hearing and directed him to produce the work permit. When he failed to do so, the People moved to reinstate the 2014 order, and the court granted the motion. The defendant failed to show that trial counsel misadvised him regarding immigration consequences or that he was prejudiced. Deportation proceedings were instituted because he was an alien who was not admitted or paroled, and he did not produce the work permit.

http://nycourts.gov/reporter/3dseries/2019/2019_06191.htm

***People v Ottey*, 9/11/19 – CPL 440.10 / No IAC**

The defendant appealed from Kings County Supreme Court order, summarily denying his CPL 440.10 motion seeking to vacate a judgment of conviction. The **Second Department** affirmed. A citizen of Jamaica, as a child, the defendant was brought into this country illegally. In 2015, he was charged with multiple defenses. At the plea proceedings, counsel stated that he had advised the defendant that: (1) the crimes of 3rd degree grand larceny and 2nd degree criminal possession of a forged instrument were aggravated felonies that would result in mandatory deportation and be a permanent bar to reentry; and (2) the best alternative would be to plead guilty to 3rd degree criminal possession of stolen property, but the defendant could not cancel removal proceedings if apprehended by ICE. In court, counsel told the defendant that if he married his longtime girlfriend, he could seek a green card. The defendant pleaded guilty to the stolen property charge and several months later was apprehended by ICE. The record showed that counsel did not provide misadvice and the court advised the defendant that his guilty plea carried immigration consequences.

http://nycourts.gov/reporter/3dseries/2019/2019_06515.htm

Cynthia Feathers, Esq.

ILS | NYS Office of Indigent Legal Services

Director, Quality Enhancement for Appellate

And Post-Conviction Representation

80 S. Swan St., Suite 1147, Albany, NY 12210

(518) 949-6131 | Cynthia.Feathers@ils.ny.gov