

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART K-19

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THE PEOPLE OF THE STATE OF NEW YORK

J.S.C.

BY: SEYMOUR ROTKER,

- against -

Indictment No.: N11507-00

JUAN GONZALEZ,

Defendant.

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The following constitutes the opinion, decision and order of the Court.

By motion dated April 13, 2005, defendant seeks an order of the court to obtain a copy of the plea and sentencing minutes for the purposes of filing a motion pursuant to Criminal Procedure Law Section 440. In his application, defendant asserts “[t]here are Constitutional issues that I would like to address. . .” Thus, defendant contends that he needs these materials to file a motion to set aside his sentence pursuant to CPL § 440.20.

The People have filed opposition dated , asserting that defendant’s current application for poor person relief requesting free transcripts of the lower court proceedings should be denied in its entirety because defendant is not entitled to this relief on a collateral motion and because defendant has failed to establish his indigent status.

For the reasons stated herein, defendant’s motion is denied.

FACTS

On or about November 30, 2000, defendant was charged in a three-count indictment with acting in concert to commit the following crimes: one count of Criminal Sale of a Controlled Substance in the Third Degree (PL § 220.39[1]); one count of Criminal Possession of a Controlled Substance in the Third Degree (PL § 220.16[1]); and one count of Criminal Possession of a Controlled Substance in the Fifth Degree (PL § 220.06[5]).

Defendant pled guilty to Criminal Sale of a Controlled Substance in the Third Degree on or about January 22, 2002.¹ Defendant was sentenced in absentia as a second felony offender on April 24, 2002.² A sentence term of from eight to sixteen years was imposed on June 11, 2003, after defendant returned on the warrant. Defendant is currently incarcerated pursuant to this sentence.

A Notice of Appeal was filed by defendant dated June 25, 2003. In their response, the People report that this appeal was dismissed as abandoned on January 20, 2005 because defendant never perfected the appeal.

DECISION

The United States Constitution does not provide a right to a defendant for poor person relief to collaterally attack a conviction. See Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987) *citing* Johnson v. Avery, 393 U.S. 483, 89 S. Ct. 747 (1969). A motion to set aside a judgment pursuant to Criminal Procedure Law Section 440 is a collateral proceeding. Therefore, the requested relief for transcripts is not mandated federally. See New York v. Richardson, 159 Misc. 2d 167, 603 N.Y.S.2d 700 (N.Y. Sup. Ct. 1993).

Furthermore, the New York State Constitution does not include post judgment motions as

¹At the time of his plea, defendant executed a waiver of appeal. See Court file.

²On March 18, 2002, a bench warrant was ordered by the Court for defendant's failure to appear.

part of the trial. See id. Here, defendant is not entitled to the demanded relief related to his impending CPL 440 motion. See id. There is no constitutional or statutory requirement that a defendant, post conviction, be provided with a free transcript for reasons other than perfecting an appeal. See Pennsylvania v. Finley, supra; People v. Zabrocky, 26 N.Y.2d 530, 311 N.Y.S.2d 892 (1970); People v. Richardson, supra.

Moreover, defendant's motion merely states that he seeks the transcripts so that he can prepare a motion in this court pursuant to Article 440 of the Criminal Procedure Law. Defendant does not assert the merits of the underlying arguments he plans to advance in his future CPL 440 motion. Defendant merely argues that he wishes to review the transcripts so that he can raise "Constitutional" grounds to set aside his sentence, and/or conviction. This bare allegation does not support a finding that defendant is now entitled to the poor person relief he presently seeks. Defendant's conviction and sentence properly terminated this proceeding and defendant has failed to establish a compelling need for the transcripts.³

Accordingly, defendant's motion is denied in its entirety.

Kew Gardens, New York
Dated: May 23, 2005

SEYMOUR ROTKER
JUSTICE SUPREME COURT

³Moreover, defendant's indigent status has not been adequately established in this Court's view. See People v. Gonzalez, 127 A.D.2d 787, 512 N.Y.S.2d 182 (2d Dept. 1987)(defendant's request for free hearing transcript properly denied where defendant failed to submit any proof of indigency although given opportunity to do so); see also People v. Yui King Yu, 158 A.D. 2d 370, 551 N.Y.S.2d 224 (1st Dept. 1990)(court can properly require movant to produce further documentation supporting alleged indigency claim where defendant seeks poor person relief requesting free transcripts).

In any event, even if defendant adequately established his indigent status, the collateral motion for which he seeks the transcripts does not permit the requested relief since this is not an appeal nor a hearing on a coram nobis motion.