SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 9

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER
Indictment #303/94

-against-

REUBEN BRAMBLE,

Defendant.

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RAYMOND GUZMAN, J.S.C.

On January 6, 1994, the defendant, Reuben Bramble, and his co-defendant Vincent Lubin, were arrested for their participation in a gunpoint robbery and home invasion. On or about January 24, 1994, they were each charged by Kings County Indictment #303/94 with seventeen offenses, including two counts of robbery in the first degree, one each under both PL §§160.15[2] and 160.15[4].

On October 5, 1994, the defendant plead guilty to one count of robbery in the first degree (PL §160.15[2]) in satisfaction of the Indictment, and in exchange for a promised sentence of an indeterminate prison term of 5 to 15 years. On October 24, 1994, the court rendered judgment and sentenced the defendant as promised (Juliver, J., at plea and sentence). As part of the plea agreement, the defendant also waived his right to appeal.

The defendant was released from prison pursuant to this sentence on December 13, 2002. In June 2003, the defendant was arrested for stabbing a man to death, and charged with murder in the second degree under Indictment #4257/03. On July 21, 2004, the defendant was found guilty of second-degree manslaughter, by jury verdict following trial, and on August 11, 2004, he was

sentenced to an indeterminate prison term of 7 to 14 years (Mangano, J., at trial and sentence). The defendant is currently incarcerated pursuant to this sentence.

In papers dated February 17, 2005, the defendant sought a writ of error *coram nobis*, to vacate the judgment of conviction under Indictment #303/94, on the ground that the evidence before the Grand Jury was legally insufficient. The court (Mangano, J.) denied the defendant's motion in a decision dated June 22, 2005, and the defendant's application for leave to appeal to the Appellate Division was denied on January 3, 2006. In a decision dated October 19, 2006, Justice Mangano denied the defendant's application to renew the motion, and on December 20, 2006, the Appellate Division again rejected the defendant's application for leave to appeal.

In papers dated January 30, 2007, and referred to this court on April 2, 2007, the defendant now moves *pro se,* pursuant to CPL §440,[1] to vacate his judgment of conviction under Indictment #303/94, on the ground that the indictment was jurisdictionally defective; in the alternative, the defendant asks for a hearing to consider this claim. The defendant also asks that counsel be assigned to represent him on the motion.

The People filed a reply in opposition to the defendant's motion, dated March 27, 2007, and also referred to this court on April 2, 2007.

This court has reviewed the papers filed by both parties, including the documents appended thereto, and the Supreme Court case files pertaining to both Indictments #303/94 and 4257/03. For the reasons set forth below, the defendant's motion to vacate judgment is summarily denied.

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[1] The defendant cites no specific section or subsection of CPL 440 in his motion papers, but implicitly asserts grounds under CPL 440.10[1][a], challenging the court's jurisdiction.

The Defendant's Motion to Vacate Judgment

The defendant's claim that Indictment #303/94 was jurisdictionally defective is based on his allegation that the People presented improper "hearsay" evidence to the Grand Jury, to wit: a ballistics report indicating that the gun and ammunition seized from the defendant at the time of his arrest were "operable." In purported support of this claim, the defendant has submitted: (1) two photocopies of a police laboratory "ballistics examination" report, signed by Detective J. Gannalo as "chemist/technician," dated January 10, 1994, and "stamped" January 12, 1994; and (2) five photocopied pages of what appears to be an excerpt from the transcribed minutes of the Grand Jury proceedings during which the ballistics report was moved into evidence.

The defendant asserts that Detective Gannalo, as the signatory to the ballistics report, is not expressly identified in the report as the expert who personally tested the weapon; the defendant notes that Detective Gannalo's signature appears below a "certification" attesting only that the "foregoing report is a true and full copy of the original report." Although the defendant acknowledges that under PL §190.30[2], it was not necessary for the person who tested the gun to testify before the Grand Jury, he argues that in the absence of an express representation that the person certifying the report [Detective Gannalo] had performed the test, the report constituted impermissible hearsay. In support of this argument, the defendant cites, *inter alia*, several Family Court cases, including *Matter of Rodney J.*, 83 NY2d 503 [1994]; *Matter of Wesley M.*, 83 NY2d 898 [1994]; and *Matter of Andy B.*, 205 AD2d 361 [1st Dept. 1994].

The defendant further alleges that eight years after he was convicted in the captioned

case, Indictment #303/94 was dismissed against his co-defendant, Vincent Lubin,[2] "because of the foregoing" jurisdictional "defect." The defendant offers no corroboration for this allegation.

In reply, the People present sound arguments for denying the defendant's motion on several grounds. Most saliently, the People correctly point out that the ballistics report submitted with the defendant's papers *does* include the representation that the "gun and ammo [were] tested by the undersigned," *i.e.*, by Detective Gallano. Thus, the defendant's motion is based on a false factual premise, and on that basis alone, may be summarily denied. See CPL§440.30[4][c].

Moreover, the People correctly note that the Second Department has held that even in the absence of the express representation that the technician who certified the lab report had also performed the test, the technician's signature on the report signifies *prima facie* that he did so. See *People v Washington*, 228 AD2d 23 [2d Dept. 1997], a decision in which the Appellate Division decided six appeals in addition to that in the named case [*Washington*], on the basis of this holding.

In *Washington*, the Appellate Division accorded deference to the legislature's purpose in enacting CPL §190.30[2], which excuses the appearance of certain expert witnesses before the Grand Jury, in favor of their certified reports. The court explained that the legislature intended to eliminate needless delays caused by "mostly *pro forma*" (*Id.* at 24) expert testimony at a pre-trial stage of the proceedings. While acknowledging the theoretical possibility that a technician might attest to the provenance of a lab report without having conducted the test referenced therein, the court found that the statute did not require a "ritualistic recitation" in the wording of

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[2] According to court records, co-defendant Lubin absconded shortly after being released on bail in late March or April 1994. He was re-apprehended in February 2001, and the charges against him under Indictment #303/94 were dismissed on September 13, 2002.

the certification (*Id.* at 26). The Appellate Division said that "[g]iving the name of the [technician] on the report, which the [technician] signed, leads to the uncontradicted inference, if the not the inexorable conclusion, that the named [technician] performed the test" (*Id.*, at 25); the court declared that "we will not override a statute's plain language and intendment with interpretations based on remote hypothetical possibilities" (*Id.*, at 26).

The appellate court also explained the distinction between the "facial sufficiency" standard applicable to Family Court petitions, as discussed in Family Court cases such as those cited by the defendant in his instant motion, and the standard applicable to indictments. "A Family Court petition serves as the sole and ultimate instrument for the commencement, prosecution, and adjudication of juvenile delinquency proceedings and, as such, must contain nonhearsay allegations that establish, if true, every element of the offense. An indictment, on the other hand, is an accusatory instrument that is by its very nature a hearsay document. It contains no supporting depositions or nonhearsay allegations of the kind contemplated for a petition governed by the Family Court Act" (*People v Washington,* at 25); "at the Grand Jury level, the proof may be taken as sufficient if unexplained and uncontradicted"(*Id.* at 26, citing *People v Jensen*, 86 NY2d 248; *People v Galatro*, 84 NY2d 160).

Accordingly, the defendant's motion to vacate judgment in the captioned case is without merit on both the facts and the law, and is hereby denied without a hearing. See CPL §440.30[4][b],[c], and/or [d].

Although this court sees no need to discuss all of the other grounds upon which the defendant's instant motion might be summarily denied, one seems worth mentioning for future reference: as the People assert in their reply papers, the claim advanced by the defendant in his

instant motion "was previously determined on the merits upon a prior motion." See CPL §440.10[3][b]. The defendant's previous application to vacate his conviction, by writ of error *coram nobis,* was rejected in a decision dated June 22, 2005, in which the court specifically ruled that "there is nothing contained within the record [to] support the defendant's contention that the evidence before the grand jury was legally insufficient" (Mangano, J.).[3]

Finally, this court would note that the People deny the defendant's allegation that Indictment #303/94 was dismissed against the defendant's co-defendant, Vincent Lubin, for jurisdictional reasons. The People state that they voluntarily dismissed the indictment against Lubin on September 13, 2002, because several witnesses to the crime(s) charged had by that time died, or were otherwise unavailable.

The Defendant's Request for Assigned Counsel

The defendant's request for assigned counsel to assist him on this motion is likewise denied. A defendant has no constitutional right to representation by assigned counsel on a post-judgment collateral matter such as a motion to vacate judgment. See *People v Richardson*, 159 Misc.2d 167 [Sup. Ct. Kings Co. 1993]. However, the Court of Appeals has ruled that indigent defendants are entitled to representation by assigned counsel at *coram nobis* hearings, and when hearings on CPL §440 motions are ordered. See *People v Monahan*, 17 NY2d 310 [1966]; *People v Richardson*, *supra* at 171. Courts also have "the inherent power and the discretionary duty" to assign counsel to indigent criminal defendants, regardless of the type of proceeding, when the "defendant in his papers suggests a possible basis [for his motion] on the merits,

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[3]A copy of Justice Mangano's decision is appended hereto for the convenience of any parties who might in the future wish to review the history of this claim.

although for lack of counsel's advice, the presentation is vulnerable" (*Williams v La Vallee*, 19 NY2d 238, 241).

Accordingly, inasmuch as this court has found the defendant's *vacatur* motion to be without merit, and has ordered it denied without a hearing, the defendant does not meet the criteria for assigning counsel to assist him thereon.

In conclusion, the defendant's motion to vacate his judgment of conviction under Indictment #303/94 is summarily denied in its entirety.

The foregoing constitutes the opinion, decision and order of the court.

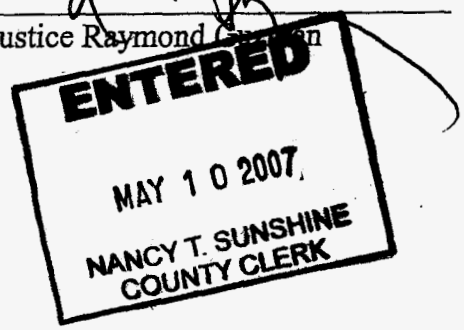
Dated: May 9, 2007
Brooklyn, New York

Raymond Guzman
Supreme Court Justice

ENTERED
MAY 10 2007
NANCY T. SUNSHINE
COUNTY CLERK

The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 11201, for a certificate granting leave to appeal from this determination. This application must be made within 30 days of service of this decision. Upon proof of financial inability to retain counsel and to pay the costs and expenses of such appeal, the defendant may apply to the Appellate Division for the assignment of cousel and for leave to prosecute the appeal as a poor person and to dispense with printing. Application for poor person relief will be entertained only if and when permission to appeal or a certificate granting leave to appeal is granted. See 22 NYCRR §671.5.

Justice Raymond Guzman



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM: PART 13

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PEOPLE OF THE STATE OF NEW YORK

Indictment Nos.: **303/1994**
4257/2003

-against-

Hon. Guy J. Mangano, Jr.
Dated: June 22, 2005

REUBEN BRAMBLE

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By writ of error coram nobis dated February 17, 2005, defendant seeks to vacate the judgment of conviction for Indictment 303/1994, on the ground that the evidence before the grand jury was legally insufficient. Further, by separate notice of motion dated March 3, 2005, defendant seeks to vacate the judgment of conviction for Indictment 4257/2003 pursuant to CPL 440.10 on the ground that the People failed to turn over certain documents prepared by the desk sergeant on the date of defendant's arrest.

As to the motion concerning Indictment 303/1994, the application is without merit. The grand jury minutes were found sufficient prior to trial and there is nothing contained within the record support defendant's contention that the evidence before the grand jury was legally insufficient.

Regarding the motion under Indictment 4257/2003, not only has defendant failed to establish the existence of any documents which were not turned over to the defense, but there is also no evidence of any possible prejudice (see People v Wolf, 98 NY2d 105).

Accordingly, defendant's motion for writ of coram nobis under Indictment 303/1994 and motion to vacate the judgment of conviction under Indictment 4257/2003 are denied in their entirety.

This shall constitute the Decision and Order of the Court.

ENTERED

JUL 26 2005

WILBUR A. LEVIN
COUNTY CLERK

HON. GUY J. MANGANO, JR.
JUSTICE OF THE SUPREME COURT

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