

People v Smith

2007 NY Slip Op 30606(U)

April 3, 2007

Supreme Court, Kings County

Docket Number: 0004264/1999

Judge: Cheryl E. Chambers

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM - PART 18

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION AND ORDER
Kings County
Indictment Number 4264/99

ROMEO SMITH,

Defendant.

-----x

CHERYL E CHAMBERS, J.S.C.

Defendant pro se moves to vacate the judgment of conviction entered against him on November 9, 2000, upon a jury verdict, in accordance with CPL 440.10. He contends that his conviction of murder in the second degree under Penal Law 125.25 (2) is not supported by legally sufficient evidence. Defendant's motion is denied because it is procedurally barred.

FINDINGS OF FACT

On March 20, 1998, at approximately 10:00 a.m., in front of 2111 Beekman Street in Brooklyn, defendant shot and killed Christopher Reid after a drug dispute. A Kings County grand jury charged defendant with two counts of murder in the second degree, both intentional murder, under Penal Law 125.25 (1), and depraved indifference murder, under Penal Law 125.25 (2), and with criminal possession of a weapon in the second and third degrees, for this act. The jury found defendant guilty of depraved indifference murder. On November 9, 2000, defendant was sentenced to an indeterminate term of imprisonment of 22 years to life.

The judgment of conviction was affirmed (*People v Smith*, 303 AD2d 771 [2d Dept 2003]), and leave was denied by the Court of Appeals (*People v Smith*, 100 NY2d 599 [2003]).

By his present motion, dated September 28, 2006, defendant asks that the judgment of conviction be vacated because the evidence at his trial was legally insufficient to prove him guilty of depraved indifference murder as defined by *People v Feingold*, 7 NY3d 288 (2006), decided on July 5, 2006, after defendant's appeal was decided.

CONCLUSIONS OF LAW

In *Policano v Herbert*, 7 NY3d 588 (2006), decided on November 16, 2006, after defendant's present motion was filed, the Court of Appeals held that *People v Feingold*, 7 NY3d 288, does not apply retroactively to cases on collateral review. Therefore, defendant's motion is denied.

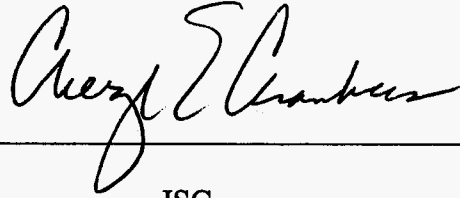
This constitutes the decision and order of the court.

The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, NY 11201 for a certificate granting leave to appeal from this determination. This application must be made within thirty days of service of this decision. Upon proof of financial inability to retain counsel and to pay the costs and expenses of the appeal, the defendant may apply to the Appellate Division for the assignment of counsel 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 (22 NYCRR 671.5).

Dated: April 3, 2007

ENTER



Cheryl J. Chambers

JSC

ENTERED
APR 6 2007
NANCY T. SUNSHINE
COUNTY CLERK