

**People v Walker**

2007 NY Slip Op 30654(U)

March 28, 2007

Supreme Court, New York County

Docket Number: 0000338/1991

Judge: Rena K. Uviller

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 72

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

Indictment No.  
338/1991

- against -

SHERMAN WALKER,

DECISION & ORDER

Defendant.

-----X  
R. UVILLER, J.:

The defendant, *pro se*, moves pursuant to CPL §440.10 to vacate the judgment entered against him after jury trial, finding him guilty in 1992 of first degree robbery and related crimes.

Defendant was sentenced to a prison term of twelve and one-half to twenty-five years.

Upon appeal, the judgment was affirmed. *People v. Walker*, 220 AD2d 214, *lv denied*, 87 NY2d 909.

This is defendant's sixth motion pursuant to CPL §440.

Defendant sets forth three bases for his claim that the judgment must be vacated: (1) that the People failed to provide him with an exculpatory police complaint report, (2) that the People tampered with a witness who testified against him, and (3) that his attorney's representation was ineffective because he did not call a fingerprint expert at trial to refute the People's fingerprint evidence or seek a hearing regarding that evidence.

Insofar as the instant motion reiterates claims made by defendant in his previous motions, such as the claim that *Brady* (*Brady v. Maryland*, 373 U.S. 83) material was withheld from him and he was denied ineffective assistance of counsel, the motion is denied for the reasons stated in my previous decisions of July 8, 1993, December 22, 1994, October 13, 1999, May 31, 2000 and May 17, 2005. CPL §440.10[3][b].

In addition, sufficient facts appear in the record to have permitted appellate review of the alleged *Brady* violation and the tampering claim. Defendant's unjustifiable failure to raise these claims on appeal precludes him from raising his claims in a collateral post-judgment motion. CPL §440.10(2)(c). The Court notes that in affirming his conviction, the Appellate Division specifically dismissed another claimed *Brady* violation.

Moreover, if the Court were to review these claims on their merits, it would still reject them. The complaint report was turned over at trial as *Rosario* and merely states that as of 20:15 on the date in question, the crime scene had not been dusted for fingerprints. The testimony received at trial was that the crime scene was dusted for prints at approximately 20:40, twenty-five minutes after the complaint report was completed. As to the tampering claim, defendant provides no sworn allegations of fact to support this claim. CPL §440.30[4][b].

Lastly, to the extent that the instant motion may contend that the complaint report is "newly discovered evidence," the claim is rejected, since the report could have been produced by defendant at trial with due diligence. Moreover, the report is not of such character as to create a probability that had it been received at trial, the verdict would have been more favorable to defendant. CPL §440.10[g]. In any event, the report was provided to the defense.

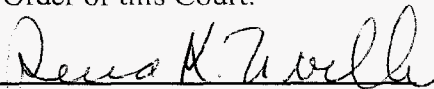
Defendant's claim of ineffective assistance was raised in prior post-judgment motions and the instant claim could have been raised earlier. Defendant's ineffective assistance of counsel claim is therefore denied. CPL §440.10[3][b]. In any event, defendant fails to demonstrate that his attorney's conduct was so "egregious and prejudicial" that he did not receive a fair trial. Nor does he demonstrate the required absence of strategic or other legitimate explanations for counsel's alleged failures. *People v. Benevento*, 91 NY2d 708; *People v. Rivera*, 71 NY2d 705. Disagreement with strategies, tactics or the scope of cross-examination is insufficient. *People v. Benevento*, supra. Moreover, defendant also fails to demonstrate a reasonable probability that the verdict would have

been different, absent counsel's alleged errors. *People v. Ozuma*, 7 NY3d 913.

Accordingly, defendant's motion to vacate the judgment is **denied** in all respects, without a hearing. CPL §§440.10(2)(c);440.10[3][b];440.30[4][b].

This constitutes the Decision and Order of this Court.

DATED: March 28, 2007

  
RENA K. UVILLER, J.S.C.

People: ADA Madeline Narvilas

Defendant: Pro Se