

**People v Thompson**

2007 NY Slip Op 30660(U)

March 7, 2007

Supreme Court, New York County

Docket Number: 0005335/2000

Judge: Renee A. White

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SUPREME COURT  
CRIMINAL TERM  
NEW YORK COUNTY  
CORRESPONDENCE/MOTION  
SUPPORT UNIT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 62

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

- against - :  
Jonathan Thompson, :  
Defendant. :

Indictment No. 5335/2000  
Decision and Order

- - - - -X  
RENEE A. WHITE, J.

Defendant moves, pro se, for an order setting aside the sentence imposed on his judgment of conviction. On November 28, 2000, defendant pleaded guilty to Robbery in the Second Degree in satisfaction of the indictment with the promise that he would be placed on interim probation supervision for a period of up to one year and would be eligible for adjudication as a youthful offender with a sentence of probation for five years if he complied with all the terms of the interim probation supervision. At the time of defendant's guilty plea, the Court informed defendant that if he did not comply with all the terms of interim probation supervision, the Court would impose a sentence of up to 15 years in state prison; and defendant acknowledged that he understood all the terms of his plea agreement.

Defendant violated the terms of his interim probation supervision when he failed to attend Daytop's drug program, failed to attend school, failed to get a job and was arrested for Grand Larceny in the Third Degree arising out of his alleged thefts of property in March, 2001. On July 9, 2001, upon consideration of

defendant's many acts of misconduct following the entry of his guilty plea, the Court imposed the minimum permissible determinate sentence of 3 ½ years in state prison. The minutes of defendant's plea and sentence do not mention the imposition of the requisite five year period of post-release supervision.

In a motion dated September 26, 2001, supplemented with papers dated November 7, 8 and 9, 2001, defendant pro se originally sought to vacate the judgment of conviction on numerous grounds other than the failure to advise him that a state prison sentence would include a five year period of post-release supervision. In an order dated November 30, 2001, this Court denied defendant's original motion in its entirety.

The People affirm that on September 5, 2001, upon defendant's arrival at the Downstate Correctional Facility to start his state prison sentence, defendant was provided with a "Legal Date Computation" by the Department of Correctional Services which informed him, inter alia, that his sentence would include a five year period of post-release supervision. The People point out that defendant could have included the instant claim in his original post-judgment motion in the fall of 2001.

Now, more than five years later, defendant pro se seeks a vacatur of the sentence imposed on the grounds that the sentence imposed was unauthorized, illegally imposed and invalid. Clearly, the sentence imposed was authorized, legal and valid. Defendant

specifically claims that the sentence must be vacated because he was not advised at the time of his guilty plea that he would be required to serve a five year period of post-release supervision.

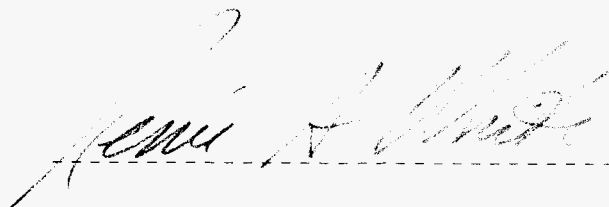
CPL §440.10(2) provides, in pertinent part, that "the court must deny a motion to vacate a judgment when: ... (c) Although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal ..."

Defendant could have raised the instant claim on appeal; but he did not appeal his judgment of conviction. Therefore, the instant motion must be denied. People v Pignataro, 20 AD3d 892 (4<sup>th</sup> Dept. 2005), lv denied 5 NY3d 855 (2005); People v Murray, 2 AD3d 1160, 1161 (3<sup>rd</sup> Dept. 2003); People v Swansbrough, 307 AD2d 389, 390 (3<sup>rd</sup> Dept. 2003), lv denied 100 NY2d 624 (2003).

This opinion constitutes the decision and order of the Court.

Dated: March 7, 2007

New York, New York



Renee A. White, J.