

People v George

2007 NY Slip Op 31097(U)

May 9, 2007

Supreme Court, Kings County

Docket Number: 0011047/1990

Judge: Raymond Guzman

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

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

DECISION AND ORDER
Indictment #11047/90

-against-

PARTRICK GEORGE,

Defendant.

-----X
RAYMOND GUZMAN, J.S.C.

The defendant was charged by Kings County Indictment #11047/90, filed on or about November 9, 1990, with attempted murder in the first degree; criminal possession of a weapon in the second degree and third degrees; reckless endangerment in the first degree; and menacing.

On November 4, 1991, the defendant plead guilty to attempted criminal possession of a weapon in the second degree (PL §110/265.03), in satisfaction of Indictment #11047/90, and in exchange for a promised sentence of imprisonment for an indeterminate term of 3-1/4 to 6-1/2 years. The defendant was adjudicated a second-felony offender, and on November 25, 1991, judgment was rendered and the defendant was sentenced as promised in the plea agreement (Meyerson, J., at plea and sentence).

In papers dated February 14, 2007, and referred to this court on April 4, 2007, the defendant *pro se* now moves this court, under CPL §440.10, to vacate the judgment of conviction under Indictment #11047/90. In papers dated April 4, 2007, the People filed a reply opposing the defendant's motion. The defendant then filed additional papers, dated April 6, 2007.

This court has reviewed the Supreme Court case file pertaining to Indictment #11047/90, and the papers filed by both parties, including the documents appended thereto. For the reasons set forth below, the defendant's motion to vacate judgment under Indictment #11047/90 is summarily denied.

The defendant's *vacatur* motion is based on his claim that "no response [was received] from the DA within the time prescribed by law." However, this court has received no previous or underlying motion from the defendant to which the People could have replied.

Perhaps the defendant has confused his conviction under Indictment #11047/90 with his conviction under Indictment #4166/87. Although the defendant refers to the indictment by the number "11047/90," he also refers to the date of conviction as September 13, 1988. According to court records, the defendant was convicted of a felony on September 13, 1988, under Indictment #4166/87, and it was this conviction (under #4166/87) which served as the basis for the defendant's adjudication as a second-felony offender, under Indictment #11047/90.

In their reply to the defendant's instant motion, the People chronicle the defendant's post-judgment challenges to his convictions under both Indictments #11047/90 and #4166/87, and aver that they have received no underlying motion to vacate judgment under Indictment #11047/90, to which they have failed to reply. The People specifically aver that they replied to the defendant's last motion to vacate judgment under Indictment #11047/90 -- filed over ten years ago, in papers dated September 21, 1996 -- wherein the defendant claimed that (1) police documents showed that testimony at the suppression hearing was false; (2) the court lacked jurisdiction over the defendant; and (3) the defendant's counsel rendered ineffective assistance.¹

The People also report that the defendant has more recently moved in Kings County Supreme Court, in papers dated October 8, 2006, to vacate judgment under Indictment #4166/87; according to the People, this motion is pending before Justice Gerges, and the People's reply is

¹ The People have submitted a copy of the defendant's 9/21/96 *vacatur* motion as an exhibit to their current papers, along with copies of the People's reply thereto, dated 10/7/96; the decision denying the defendant's motion, dated 10/24/96 (Vaughn, J.); and the denial of the defendant's application for leave to appeal to the Appellate Division, dated December 9, 1996 (Sullivan, J.).


due on or before May 16, 2007. The People advise that the defendant has filed additional papers, dated February 13, 2007, seeking to have this *vacatur* motion granted because the People had not yet replied. Presumably, these latter papers have also been referred to Justice Gerges.

In any event, the *vacatur* motion pending before this court, in connection with Indictment #11047/90, asserts that the People failed to reply timely to an underlying motion which does not exist; in the absence of any evidence that such a motion does exist, the defendant fails to state a legal basis upon which an order to vacate a judgment of conviction could be based.

Accordingly, the defendant's motion to vacate judgment under Indictment #11047/90 is summarily denied. See CPL §440.30[4][a]and[d].

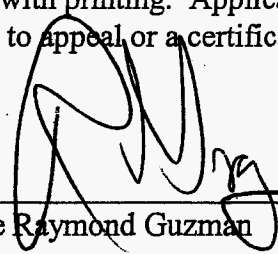
The foregoing constitutes the opinion, decision and order of the court.

Dated May 9, 2007
Brooklyn, New York


Raymond Guzman
Supreme Court Justice

ENTERED
MAY 10 2007
NANCY T. SUNSHINE
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 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. See 22 NYCRR §671.5.



Justice Raymond Guzman

ENTERED
MAY 10 2007
NANCY T. SUNSHINE
COUNTY CLERK