

People v Murphy

2007 NY Slip Op 32685(U)

August 24, 2007

Supreme Court, Kings County

Docket Number: 0008810/1987

Judge: John G. Ingram

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART 21

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THE PEOPLE OF THE STATE OF NEW YORK, DECISION AND ORDER

-against-

Indictment No. 8810/87

JOSEPH MURPHY,

Defendant,

-----X

INGRAM, J.

Defendant stands convicted, after pleading guilty in Supreme Court, Kings County on July 11, 1984, of Attempted Murder in the Second Degree, in full satisfaction of the charges contained in the indictment. Defendant was sentenced to a prison term of seven to twenty-one years (Egitto, J., at plea and sentence). In pro se motion dated May 10, 1999, Defendant moved to set aside his sentence pursuant to C.P.L. § 440.20 on the ground that it was excessive. By decision and order dated August 3, 1999, Defendant's motion was denied (Hall, J.). On October 5, 2001, Defendant was released on parole. On August 14, 2002, the Division of Parole determined that Defendant had violated parole and on September 12, 2002, a warrant was issued for Defendant's arrest based upon his violation. As a result, the time remaining on Defendant's sentence was tolled. On October 30, 2004 Defendant was arrested for robbing a bank in Pennsylvania. On August 22, 2005 was sentenced in Pennsylvania federal district court to ninety-seven (97) month's imprisonment. Defendant is currently incarcerated in Schuylkill Federal Correctional Facility.

The Motion Before the Court

In *pro se* motion dated December 11, 2006, Defendant moved to vacate the parole warrant and for this Court to run the remainder of his state sentence concurrently with his federal sentence.

Responses were invited from the Kings County District Attorney and Attorney General of the State of New York as “interested” parties.¹ Both the Kings County District Attorney and the Attorney General of the State of New York submitted Affirmations in Opposition.

The District Attorney argued that Defendant’s present claim is procedurally barred from this Court’s review under C.P.L. § 440.10 or 440.20, because Defendant did not raise a ground for relief. The Attorney General argued that the motion should be dismissed because it contained mere conclusory allegations and no supportive facts. In deciding the instant motion, this Court considered Defendant’s moving papers, the papers in opposition, the court file and applicable law.

The Court’s Decision

C.P.L. § 440.10(1) sets forth several grounds upon which a court may vacate a judgment of conviction such as a jurisdictional defect, newly discovered evidence or fraud. See C.P.L. § 440.10(1)(a)-(h). It appears from Defendant’s motion that he requests this Court to vacate the parole warrant issued in this case and run his state sentence concurrently with his federal sentence. However, Defendant’s motion was devoid of any legal grounds which would support a motion to vacate the judgment pursuant to C.P.L. § 440.10. Therefore, the Court denies

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Defendant motion addresses two separate issues - one concerning his state sentence and the second concerning his parole detainer. Both of these grounds were contained in one motion addressed to the Kings County District Attorney’s Office, however, this Court believes that the parole issue should be handled by the Attorney General’s Office.

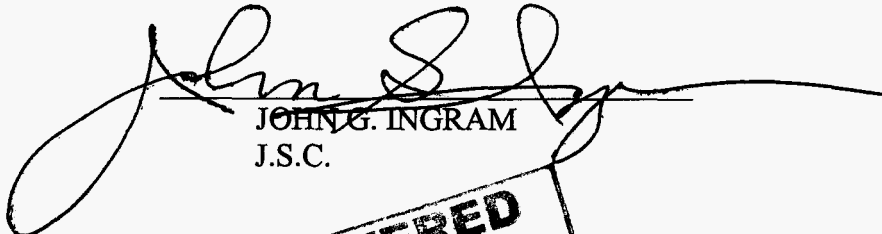
Defendant's motion because his claim does not constitute a legal basis upon which a motion to vacate the judgment can be granted.

If the Court were to interpret Defendant's motion as a request to set aside his sentence, he still has not set forth a legal basis to grant that relief. This Court denies Defendant's motion to modify his sentence since the sentence was not "unauthorized, illegally imposed or otherwise invalid as a matter of law." C.P.L. 440.20(1). Defendant made a basic request that this Court vacate his warrant and run his sentence in this case concurrently with his federal sentence, however, he never alleged that the sentence was unauthorized, illegally imposed or otherwise invalid as a matter of law.

Additionally, Defendant fails to provide sufficient sworn allegations to support his request that this Court vacate his parole warrant. Defendant's motion contains mere bare allegations without any factual rationale or documentation to support his request. Furthermore, based on the paperwork submitted by the Attorney General's Office, Defendant had violated his parole by failing to adhere to the conditions of his release, including failing to report to parole supervision. Based on these violations, a parole warrant was properly issued. As a result of this parole warrant, Defendant's state sentence was interrupted "as of the date of delinquency and such interruption shall continue until the return of [the defendant] to an institution under the jurisdiction of the state department of correctional services." See P.L. § 70.40(3)(a). Parole cannot determine how much time Defendant actually will have to serve on his New York sentence until after he is returned to the jurisdiction of the New York State Department of Corrections and after he has had his final parole revocation hearing. Until that time, the parole warrant must remain in effect to make sure Defendant is returned to New York State Department of Corrections after he completes his federal sentence.

Accordingly, Defendant's motion to reconsider his state sentence to run concurrent to his federal sentence and/or vacate his parole detainer is denied. This opinion constitutes the Decision and Order of this Court.

Dated: August 24, 2007
Brooklyn, New York



JOHN G. INGRAM
J.S.C.

ENTERED
AUG 24 2007
NANCY T. SUNSHINE
COUNTY CLERK