SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM: PART 34

THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER
HON. ROBERT K. HOLDMAN

Indictment Numbers:
3414/76, 3415/76

-against-

December 11, 2007

ALFRED MANCUSO,

Defendant.

Defendant was convicted of Murder in the Second Degree on May 11, 1978, upon a jury verdict, and was sentenced in June, 1978, to a term of imprisonment of 25 years to life.

Since his conviction, Defendant, pro se, has filed numerous appeals, [see, inter alia, People v. Mancuso, 268 AD2d 488 (2d Dep't, 2000); People v. Mancuso, 258 AD2d 670 (2d Dep't, 1999); People v. Mancuso, 250 AD2d 708 (2d Dep't,1998); People v. Mancuso, 232 AD2d 658 (2d Dep't,1996); People v. Mancuso, 71 AD2d 994 (2d Dep't, 1979)], post-conviction motions [see, e.g., People v. Mancuso, 141 Misc.2d 382 (Sup. Ct, Kings Co., 1988)], and federal habeas corpus petitions [see, e.g., Mancuso v. Herbert, 166 F.3d 97 (2d Cir. 1999); Mancuso v. Harris, 677 F.2d 206 (2d Cir. 1982)].

Defendant's claims have repeatedly been found to be without merit. Defendant has continued to file motions and to send correspondence to the court on nearly a weekly basis. Further, defendant persists in raising the same issues, albeit couched in different language.

Most recently, on September 21, 2007, Defendant's motion for appointment of a special prosecutor was denied by Justice Neil Jon Firetog, Kings County Administrative Judge. Justice Firetog noted that the defendant has filed a multitude of post-judgment

motions over the past several years, alleging that various injustices were perpetrated upon him by the Kings County District Attorney and by a retired Justice of the Supreme Court, all of which have been determined to be without merit.

This Court presently has over twenty-seven items of handwritten correspondence, received from Defendant throughout August, September, October and November 2007, most of which were addressed to this Court; others were addressed to retired Justice Feldman, Justice Feldman's then law clerk and ADA Caroline Donhauser. Two of the communiqués were calendared by the Motion Clerk as motions. (Pursuant to judicial order, the People have not submitted responses to the two motions. [See Decision and Order by Hon. Anne G. Feldman, dated December 18, 2006; see also CPL 440.30 (1)].

One of the motions seeks vacatur of his conviction, or in the alternative, requests the Court to direct that a fact-finding hearing be held for the purpose of "establishing that Kings County District Attorney Charles J. Hynes is engaged unlawfully in the cover-up that Indictment Nos. 2414/76 and 3415/76, involved in defendant's case, were altered and forged by the former District of Kings County in the absence of the indicting #1 October 1976 Grand Jury, on November 8th, 1976; and that he has unlawfully suppressed sworn criminal complaints submitted to him for investigation by defendant, which were dated May 22, 2007, May 25, 2007, and June 4, 2007, in which defendant has charged District Attorney Charles J. Hynes, Assistant District Attorney Caroline R. Donhauser, and former Kings County Supreme Court Justice Anne G. Feldman with major crimes in connection with their cover-up of the aforesaid indictment forgery involved in defendant's case."

CPL 440.10 (2) (a) and (c) provide:

> 2. Notwithstanding the provisions of subdivision one, the court must deny a motion to vacate a judgment when:
> (a) The ground or issue raised upon the motion was previously determined on the merits upon an appeal from the judgment, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue; or
> (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 during the prescribed period or to his unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him; or

CPL 440.10 (3)(a) (b) and (c) provide:

3. Notwithstanding the provisions of subdivision one, the court may deny a motion to vacate a judgment when:
(a) Although facts in support of the ground or issue raised upon the motion could with due diligence by the defendant have readily been made to appear on the record in a manner providing adequate basis for review of such ground or issue upon an appeal from the judgment, the defendant unjustifiably failed to adduce such matter prior to sentence and the ground or issue in question was not subsequently determined upon appeal.

(b) The ground or issue raised upon the motion was previously determined on the merits upon a prior motion or proceeding in a court of this state,

(c) Upon a previous motion made pursuant to this section, the defendant was in a position adequately to raise the ground or issue underlying the present motion but did not do so.

CPL 440.30 (1) provides:

1. A motion to vacate a judgment pursuant to section 440.10 and a motion to set aside a sentence pursuant to section 440.20 must be made in writing and upon reasonable notice to the people. Upon the motion, a defendant who is in a position adequately to raise more than one ground should raise every such ground upon which he intends to challenge the judgment or sentence.

Subdivision 4 of CPL 440.30 (1) provides:

4. Upon considering the merits of the motion, the court may deny it without conducting a hearing if:
(a) The moving papers do not allege any ground constituting legal basis for the motion;

Defendant's motion to vacate the conviction is procedurally denied pursuant to Section 440.10 of the Criminal Procedure Law. Defendant's claims have been fully and fairly litigated and found to be without merit or have been waived for failure to raise them on direct appeal or in previous motions. Denial is further warranted pursuant to CPL 440.30 (4) (a), because there is no legal basis for the claim.

The crux of Defendant's current claim is apparently his allegation that the indictment was not voted until November 8, 1976, yet the #1 October 1976 Grand Jury was discharged on October 29, 1976. Defendant seems to base his allegation as to the date of the vote upon a stamp on the indictment dated November 8, 1976, which reads "Approved as to Form and Content." It was explained to Defendant multiple times by the Kings County Criminal Term Motion Clerk, beginning at least in 2001, that an indictment is not necessarily filed on the day it was voted, and can be filed at a much later date. As Justice Firetog stated in his decision dated September 21, 2007, denying Defendants request for appointment of a special prosecutor, "[n]otwithstanding the denial of all defendant's motions, he persists in attempting to use CPL §440 to allege that a forgery was committed by the District Attorney's office more than 30 years ago."

The other motion calendared by the Motion Clerk seeks a judicial subpoena duces tecum "for production before this Court and Judge Thomas C. Platt of the United States District Court, Eastern District of New York by the DA of Kings County," the #1 October 1976 grand jury records.

Defendant is not entitled to a judicial subpoena duces tecum and that motion is denied. See, People v. Diaz, 195 Misc.2d 337 (Sup. Ct, Bronx County, 2003).

Defendant's motions are denied in all respects

Defendant has raised in state court and federal court over the last eighteen years a bevy of legal arguments to advance his claim that his conviction should be vacated. He has had a full opportunity to litigate his claims and his motions have received full consideration by the courts. His arguments have been found to be repetitious and

without legal basis. There is no relief which the defendant might move for in good faith, which has not already been requested. See People v. Larocco, 1/7/2002 NYLJ 29, (col. 5) (Sup. Ct, Queens Co.). This Court now has more than twenty-seven pending items of correspondence from Defendant before it, and boxes full of prior litigation documents and correspondence.

The following language in People v. Larocco, 1/7/2002 NYLJ 29, (col. 5) (Sup. Ct, Queens Co.) employed by the Court in deciding that defendant's pro se motions, aptly speaks to the situation facing this Court:

> "This Court finds that the defendant has engaged in a conscious pattern of baseless litigation which has resulted in vexation, harassment and needless expense, and has placed an unnecessary burden on this Court and its supporting personnel. The Court has expended countless hours to process and calendar these baseless applications, to read them, and to issue and re-issue decisions on each application. This behavior works to the detriment of the honest litigant who is deprived of his or her fair share of these limited resources, and to the similar detriment of the administration of justice as a whole."

A court is "not without authority to curtail the waste of resources" resulting from frivolous pro se motions. See People v Rivera, 159 Misc2d 556, 561 (Sup. Ct, Bronx Co., 1993); see also In re Moore, 17 Misc3d 228 (Sup. Ct, Kings Co., 2007); People v Brown, 14 Misc 3d 1237 (A) (Sup. Ct, Queens Co., 2007). A court has the inherent power to regulate court practices, which may include imposition of sanctions for frivolous litigation. See Plachte v. Bancroft Inc., 3 AD2d 437 (1st Dep't, 1957); Matter of Diane D., 161 Misc2d 861 (Sup. Ct, NY Co., 1994); Spremo v. Babchik, 155 Misc2d 382 (Sup. Ct, Queens Co., 1992), aff'd as modified, 216 AD2d 382 (2d Dep't, 1995), lv to appeal den, 86 NY2d 709 (1995), cert den (116 S. Ct, 1996); People v. I.L., 143 Misc2d 1061 (Sup. Ct, Bronx Co., 1989); People v. Larocco, supra, 1/7/2002 NYLJ 29, (col.5) .

A court's inherent jurisdiction encompasses anything reasonably necessary to control its order of business. See Riglander v Star Co., 98 App Div 101 (1st Dep't, 1904).

The court's inherent powers have been described as "all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective." Matter of People v Little, 89 Misc2d 742, 745 (Yates County Ct, 1977); see also, Matter of Diane D., supra, 161 Misc2d 861.

Moreover, a court has the "duty and power to protect courts, citizens and opposing parties from the deleterious impact of repetitive pro se litigation," as such litigation deprives other litigants of their share of judicial resources. See, Spremo v. Babchik, supra,155 Misc2d 796, 802 (Sup. Ct, Queens Co., 1992). Although public policy mandates free access to the courts, "courts have imposed injunctions barring parties from commencing any further litigation where those parties have engaged in continuous and vexatious litigation." Robert v. O'Meara, 28 AD3d 567, 568 (2d Dep't, 2006); see also Sassower v. Signorelli, 99 AD2d 358 (2d Dep't, 1984).

Accordingly, it is ordered that Defendant Alfred Mancuso is enjoined from instituting any further pro se proceedings before this Court without the express prior approval of this Court or the Administrative Judge of this Court. See Robert v. O'Meara, 28 AD3d 567 (2d Dep't, 2006); Sassower v. Signorelli, 99 AD2d 358 (2d Dep't, 1984); People v. Larocco, 1/7/2002 NYLJ 29, (col. 5) (Sup. Ct, Queens Co.); see also, In re Moore, 17 Misc3d 228 (Sup. Ct, Kings Co., 2007); People v. Samuel Davis, 1/6/2006 NYLJ 18, (col. 3). Said approval shall be annexed by Defendant as the cover page of any future moving papers before they will be accepted for calendaring. Any papers submitted without such approval will not be considered. Any request for such approval shall be limited to no more than one page. Moreover, any letters or other documents that Defendant may send to judges of this court or to court staff will be retained but will not be answered, unless they relate to a motion for which Defendant received the aforesaid express prior approval.

Violation of this order may result in a contempt hearing, and may ultimately result

in the imposition of a substantial monetary fine upon Defendant, which will be levied upon his inmate funds. See People v. Larocco, 1/7/2002 NYLJ 29, (col. 5) (Sup. Ct, Queens Co.).

ENTER:

HON. ROBERT K. HOLDMAN, J.S.C.
Judge of the Court of Claims