

**People v Pettus**

2007 NY Slip Op 34481(U)

January 25, 2007

Sup Ct, New York County

Docket Number: 6117/02

Judge: William A. Wetzel

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 34

THE PEOPLE OF THE STATE OF NEW YORK

-against-

JAMES PETTUS.

Defendant.

DECISION AND ORDER

Index No. 6117/02

APPEARANCES:

For the People: Robert M. Morgenthau  
District Attorney  
New York County  
1 Hogan Place  
New York, New York 10013  
By: Randolph Clarke  
Assistant District Attorney  
Of Counsel

For the Defendant: James Pettus DIN03-R-3597  
Great Meadow Correctional Facility  
Box 51  
Comstock, New York 12821-0051  
*Pro Se*

WILLIAM A. WETZEL, J.:

On October 1, 2002, a New York County Grand Jury indicted this defendant for the crimes of Forgery in Second Degree (2 counts), in violation of Penal Law §170.10, and Offering False Instrument for Filing in the First Degree (2 counts), in violation of Penal Law §175.35. The defendant was arraigned on the indictment on December 12, 2002, and served with a copy of that indictment. The case was referred to the Honorable James A. Yates for all purposes, and on January 31, 2003, Judge Yates reviewed the minutes of the Grand Jury proceedings and

determined that the evidence before the Grand Jury was legally sufficient and that the proceedings were in all respects legally proper.

The defendant received discovery material on February 25, 2003, which included the Human Resources Administration application which constituted evidence in the case. The defendant filed motions to suppress evidence in addition to his discovery motions, and on May 7, 2003, a pre-trial hearing on the defendant's motion to suppress was held. At issue were the statements the defendant made to investigators from the Human Resources Administration Bureau of Fraud Investigation. At the close of the hearing, the Defendant's Motion to Suppress was in all respects denied. A trial of the indictment was held before this court and a jury on September 11, 2003. The jury convicted the defendant of all four counts of the indictment. On October 20, 2003, the defendant was sentenced as a second felony offender to an aggregate term of 4 to 8 years incarceration, to run concurrently with an indeterminate sentence of 6 to 12 years imposed in Kings County Supreme Court on larceny-related charges. On July 28, 2005, the Appellate Division, First Department affirmed the defendant's conviction. People v. Pettus, 20 AD3d 369 (1<sup>st</sup> Dept.) lv denied, 5 NY3d 855(2005).

The defendant now moves this court to grant him an opportunity to "view and inspect" the Grand Jury minutes in this case. The basis of the defendant's application is a typographical error which appears on the indictment back. The indictment back, which contains the caption and a listing of the charges, erroneously states that the defendant was indicted for Offering a False Instrument for Filing in the Second Degree, a misdemeanor, instead of the crime actually presented to and voted upon by the Grand Jury, Offering a False Instrument for Filing in the First Degree, a felony. The defendant suspects that he was indicted for a misdemeanor but improperly tried for a felony. He finds further support for his argument in the Assistant District

Attorney's Affirmation in Opposition to the Defendant's Motions for a Writ of Mandamus pursuant to Article 78 of the CPLR, Index Nos.. 403368/04 and 403757/04, filed on January 5, 2005, because at page 2, ¶ 9 of that affirmation, Assistant District Attorney Clarke repeats the error in his recitation of the procedural history and indicates that the defendant was convicted of the crime of Offering a False Instrument for Filing in the Second Degree, instead of the First Degree. For the reasons which follow, the defendant's motion is in all respects denied.

As a threshold matter, because the defendant proceeded to trial and was convicted of the crimes charged in the indictment based upon legally sufficient trial evidence, *see People v. Pettus*, 20 AD3d 369, 1<sup>st</sup> Dept. 2005, the court's order which found the grand jury minutes legally sufficient is not reviewable. *People v. Smith*, 4 NY3d 806, 808 (2005).

Were this court to examine the merits of the argument, however, it would find the defendant's argument frivolous. In 2003, in response to the defendant's Omnibus Motion, the People consented to the court's in camera review of the Grand Jury minutes. Those minutes were submitted to the Honorable James A. Yates, who read them and concluded that the evidence before the Grand Jury supported the offenses charged, that the Grand Jury was properly instructed on the law, and that the integrity of the proceedings was unimpaired. Judge Yates concluded that release of grand jury minutes, or any portion thereof, to the defendant was unnecessary because there were no issues raised in the minutes which required additional legal analysis or argument. CPL§ 210.30(3).

In an excess of caution, this court has also reviewed the Grand Jury minutes, and concurs with Judge Yates' conclusion that the presentation to the Grand Jury was legally proper. The written indictment filed in the case was legally sufficient, in that it complied with all of the requirements set forth in CPL§ 200.50. The crimes charged were properly enumerated, and each

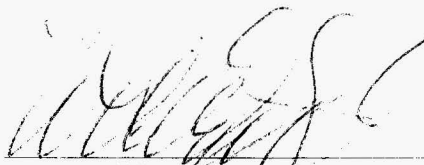
count contained a factual statement supporting every element of the offenses charged.

Therefore, the defendant had ample notice of the crimes of which he was charged, affording him an opportunity to prepare a defense. The typographical error on the indictment back which erroneously designated the wrong degree of offering a false instrument for filing did not change the theory of the case, the evidence presented, nor did it deceive the defendant in any way as to the crime with which he was charged. Concededly, the Assistant District Attorney and his supervisors should have been more careful in their proofreading of the document. Nonetheless, this indictment did exactly what an indictment is supposed to do, namely, provide the defendant with a short concise statement specifying the crimes with which he is charged and the facts supporting every element of the crimes charged. The defendant is entitled to no more.

The court has carefully examined defendant's remaining contentions and has found them to be without merit.

In view of the foregoing, the defendant's motion is in all respects denied.

Dated: January 25, 2007  
New York, NY



William A. Wetzel