

**People v Clark**

2008 NY Slip Op 30499(U)

February 26, 2008

Supreme Court, Queens County

Docket Number: 0002146/1991

Judge: Barry Kron

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Motion

Short Form Order

SUPREME COURT STATE OF NEW YORK  
CRIMINAL TERM - PART K-16 QUEENS COUNTY  
125-01 QUEENS BLVD., KEW GARDENS, N.Y. 11415

P R E S E N T:

HON. BARRY KRON, A.J.S.C.  
Acting Justice

THE PEOPLE OF THE STATE OF NEW YORK	:	Ind. No.:2146-91
	:	
	:	
-against-	:	<u>Motion To Set Aside</u>
	:	<u>Sentence</u>
RONALD CLARK AKA,	:	
RINALDO CLARK	:	
Defendant.	:	

The following papers numbered  
1 to 2 submitted in this motion.

By: Defendant, Pro Se  
For The Motion

HON. RICHARD A. BROWN, D.A.  
By: Ayelet Sela, ADA  
Opposed

	<u>Papers</u> <u>Numbered</u>
Notice of Motion/Affidavits/Exhibits .....	1
Answering & Reply Affidavits/Exhibits .....	2

Upon the foregoing papers, defendant's motion to set aside the sentence is denied in accordance with the accompanying memorandum.

Date: February 26, 2008

  
BARRY KRON, A.J.S.C.

M E M O R A N D U M

SUPREME COURT, QUEENS COUNTY  
CRIMINAL TERM, PART K-16

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THE PEOPLE OF THE STATE OF NEW YORK	:	BY: BARRY KRON, AJSC
	:	
	:	
-against-	:	DATED: February 26, 2008
	:	
RONALD CLARK A/K/A,	:	
RINALDO CLARK	:	IND. NO.: 2146-91
	:	
Defendant.	:	

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Defendant has moved, *pro se*, for "an order pursuant to Criminal Procedure Law § 440.20 to set aside his sentence" on the ground that he incorrectly received consecutive sentences. Defendant has made three previous CPL § 440.20 motions that were denied by the Court.

The People oppose defendant's motion, contending that it is procedurally barred and should be denied.

On June 2, 1993, defendant was convicted after trial of Rape in the First Degree (2 counts); Sodomy in the First Degree (7 counts); Sexual Abuse in the First Degree; Unlawful Imprisonment in the First Degree; Unlawful Imprisonment in the Second Degree; Assault in the Second Degree; Assault in the Third Degree, and Criminal Possession of a Weapon in the Fourth Degree. On June 23, 1993, defendant was sentenced to consecutive indeterminate terms of imprisonment of four to twelve years for the rape and sodomy

convictions, two to six years for the sexual abuse conviction and concurrent terms of two to six years for the second degree assault conviction, one to three years for the first degree unlawful imprisonment conviction and one year for the second degree unlawful imprisonment, third degree assault and weapon possession convictions (Dunlop, J. trial and sentence).

On December 4, 1995, defendant's judgment of conviction was affirmed (222 A.D.2d 446 [2d Dept. 1995])<sup>1</sup>. On March 12, 1996 and May 24, 1996, defendant's applications for leave to appeal to the Court of Appeals were denied (87 N.Y.2d 1018 [1996]; 88 N.Y. 2d 982 [1996]).

On July 1, 1997, May 20, 2003, and February 24, 2005, the Court denied each of defendant's previous motions to set aside his sentence pursuant to CPL § 440.20 (see Decisions in Court File)<sup>2</sup>. The Appellate Division, Second Department denied each of defendant's motions for leave to appeal the denial of the motions.

Defendant's current motion is procedurally barred due to the determination on appeal that his sentence was not excessive (CPL § 440.20 [2]). Thus, his current motion must be denied.

Additionally, defendant's motion is procedurally barred because of the three prior determinations by the Court which denied his motions to set aside the sentence (CPL § 440.20 [3]).

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Within the decision, the Appellate Division held that defendant's sentence was not excessive.


The Court has also denied two previous motions to vacate judgment pursuant to CPL § 440.10 filed by defendant (See Decisions in File).

In any event, a motion to set aside a sentence pursuant to CPL § 440.20 is applicable only to a sentence which is "unauthorized, illegally imposed, or otherwise invalid as a matter of law" (see People v. Minaya, 54 NY2d 360, cert. denied, 455 US 1024). In the instant case, the defendant's sentence is none of these things. The consecutive sentences defendant received were based upon separate acts as represented by the convictions for 15 counts in the indictment. Thus, the consecutive sentences imposed were authorized (People v. Curtis, 195 A.D.2d 968 [4th Dept. 1993]; People v. Rivera, 186 A.D.2d 594 [2d Dept. 1992]). Defendant's moving papers do not allege any ground constituting a legal basis to set the sentence aside. The court is "expressly prohibited by CPL § 430.10" from altering a lawful sentence once it has commenced (see People v. Minaya, supra).

Based on the foregoing, the motion to set aside the sentence is denied.

Order entered accordingly.

The Clerk of the Court is directed to forward a copy of this decision and order to counsel for the defendant and the District Attorney.

  
BARRY KRON, A.J.S.C.