SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM: PART 30

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

REUBEN BRAMBLE,

Defendant.

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By: Hon. Patricia M. Di Mango

Date: May 5, 2008

DECISION & ORDER

Indictment No. 303/1994

The defendant has moved, *pro se,* once again to vacate the judgment of conviction herein pursuant to CPL §440.10 on the ground that the underlying indictment was not based upon legally sufficient evidence. The People have opposed the defendant's motion, which they deem to be one for reargument, since the defendant has made this same application twice previously.

Under Kings County Indictment No. 303/1994, defendant Reuben Bramble and his co-defendant, Vincent Lubin, were charged with aiding each other and acting in concert with another in the commission of seventeen separate offenses with respect to a gunpoint robbery and home invasion which occurred between January 5th and January 6th, 1994. On October 5, 1994, the defendant pleaded guilty to one count of Robbery in the First Degree (PL §160.15[2]–armed with a deadly weapon, to wit, a loaded pistol) in full satisfaction of all the charges in the indictment, and he waived his right to appeal as part of the plea agreement. Mr. Bramble received a promised sentence of five to fifteen years' imprisonment on October 24, 1994 before Juviler, J. Following his release from prison in 2002, the defendant was arrested for fatally stabbing a man and was subsequently convicted (under Ind. No. 4257/2003) of second-degree

manslaughter in 2004. The defendant remains incarcerated on that seven-to-fourteen-year sentence.

Meanwhile, co-defendant Lubin had jumped bail in April of 1994 and was finally rearrested in 2001. However, on September 13, 2002, the People ultimately voluntarily dismissed the charges against Lubin (under Indictment No. 303/1994) due to the unavailability or death of several witnesses.

The instant motion is not the defendant's first attempt to obtain post-conviction relief under the captioned indictment. In 2005, the defendant had sought a writ of error *coram nobis* and vacatur of his 1994 conviction[1] on the ground that the evidence before the Grand Jury[2] was legally insufficient. Specifically, the defendant had claimed upon that motion that the two ballistics reports submitted to the Grand Jury contained inadmissible hearsay and that there was not otherwise sufficient evidence to establish the armed robbery charges and weapon possession counts. However, on June 22, 2005, the court (Mangano, J.) denied the motion on the merits, and the defendant was denied leave to appeal to the Appellate Division on January 3, 2006. Thereafter, on October 19, 2006, the court (Mangano, J.) denied the defendant's application to renew the motion as to both indictments. Here too, by determination made on December 20, 2006, the Appellate Division rejected the defendant's application for leave to appeal from this latter denial of relief.

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[1] The defendant had additionally moved to vacate his judgment of conviction under Ind. No. 4257/2003 pursuant to CPL 440.10.

[2] By decision dated March 31, 1994, Justice Grajales had found the Grand Jury minutes legally sufficient to establish all the counts charged by Ind. No. 303/1994 and that the Grand Jury was correctly charged upon the applicable law and that the proceedings were otherwise in accordance with the law.

Subsequently, in a decision dated May 9, 2007, the court (Guzman, J.) denied defendant's second motion to vacate his judgment of conviction. In that instance, the defendant raised the identical argument as that made in his prior motion to vacate his conviction (namely, that the evidence adduced under Ind. No. 303/1994 was legally infirm). Accordingly, the court rejected the defendant's claim both procedurally, pursuant to CPL §440.10[3][b], and on the merits.

Now, upon the instant motion, the defendant again seeks vacatur of the judgment of conviction pursuant to CPL §440.10 on the ground that Indictment No. 303/1994 was jurisdictionally defective. Just as he argued upon his prior two motions, the defendant once again claims here that the ballistics reports attesting to the operability of defendant's gun constituted inadmissible hearsay[3] evidence in the Grand Jury. The People, however, have responded as though defendant's CPL §440.10 motion were a motion to reargue under CPLR §2221, presumably based on the likeness of the instant motion to those submitted by defendant in the past.

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[3] This court makes the observation that the defendant continues to raise this argument because he is laboring under the misapprehension that his co-defendant's case was dismissed on this same ground. That is not true. While the co-defendant had brought the identical claim seeking dismissal of his case on the basis of the alleged improper receipt of the hearsay ballistics report and consequent infirmity of the Grand Jury evidence (by way of a pro se motion dated March 19, 2002), such was not the ground upon which the indictment was ultimately dismissed against him.

On the contrary, it is evident that the co-defendant's case was dismissed upon an application by the District Attorney's Office because the People were no longer in a position to prosecute the case against the co-defendant given the passage of time and loss of witnesses due to Mr. Lubin's having absconded and being at large for seven years.

While the co-defendant benefitted from his flight, this provides no ground to reverse Mr. Bramble's conviction and vacate his plea, entered years earlier. In any event, none of this affects the defendant's subsequent conviction, after trial, upon the charge of Manslaughter in the Second Degree and his sentence of seven to 14 years thereon (imposed on August 11, 2004), pursuant to which the defendant remains presently incarcerated.

As a threshold requirement, a motion for leave to reargue "shall be identified specifically as such." The motion "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR §2221[d][1], [2]). Additionally, the motion must be made within thirty days after service of the order determining the prior motion, with notice of entry (CPLR §2221[d][3]).

Here, Mr. Bramble's moving papers lack even the rudimentary elements of a viable motion to reargue because the defendant has not identified his motion as a motion to reargue or even cited CPLR §2221, and further, the defendant does not allege that the court overlooked or misapprehended matters of fact or law in determining the prior motion. Hence, notwithstanding the People's characterization of this motion as one to reargue, this court considers it to be an application to vacate the judgment of conviction under CPL §440.10.

In any event, notwithstanding this court's finding that the instant motion seeks vacatur, rather than reconsideration of a prior decision, the defendant is not entitled to the relief requested. On the contrary, the defendant's claim is barred because it was raised in two prior motions and was "previously determined on the merits" in both instances (CPL §440.10[3][b]). The court declines to review this same claim yet again. Accordingly, the defendant's motion is, respectfully, denied.

This decision shall constitute the order of the court.

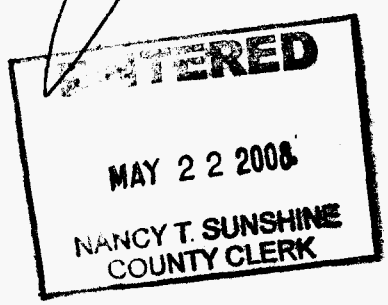
The defendant is hereby advised of his right to apply to the Appellate Division, Second Department, 45 Monroe Place, Brooklyn, New York 11201 for a certificate granting leave to appeal from this determination. This application must be made within 30 days of service of this

decision. Upon proof of financial inability to retain counsel and to pay the costs and expenses of the 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.[4]

ENTER:

PATRICIA M. DI MANGO, J.S.C.



[4] 22 NYCRR § 671.5.