

People v Pantoja

2013 NY Slip Op 34159(U)

May 22, 2013

County Court, Westchester County

Docket Number: 07-0265

Judge: Barry E. Warhit

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON MAY 22, 2013
WESTCHESTER
COUNTY CLERK

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

FILED

MAY 22 2013

**TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER**

DECISION & ORDER

on Motion to Vacate
Restitution Judgment

RAFAEL PANTOJA,

Indictment No. 07-0265

Defendant.
-----X

WARHIT, J.

Defendant has moved for an order modifying the sentence, rendered by this court (Hubert, J.) on March 14, 2008, and vacating that portion of the sentence as imposed civil judgments of restitution upon the defendant in an aggregate amount of \$2,142,628.000. Defendant maintains he is entitled to such relief on grounds that the Judgments and Orders of Restitution have been fully satisfied. The People oppose the Defendant's right to the relief sought and seek dismissal of the motion on procedural grounds.

In considering the within application this court has read and considered the following:

Defendant's *pro se*¹ Notice of Motion,
filed February 5, 2013, Affidavit in
Support thereof and Annexed Exhibits

¹ Petitioner herein is a former attorney. He was disbarred in 1996 as a result of having been convicted of three counts of Grand Larceny in the Second Degree on or about October 20, 1995 in New York County.

People's Affirmation in Opposition
by ADA Chapoulie, Memorandum
of Law, and Annexed Exhibits

Defendant's Reply
Declaration

The Defendant was charged, under indictment number 07-0265, with one count of Grand Larceny in the first degree, three counts of Grand Larceny in the second degree, six counts of Identity Theft in the first degree and one count each of Grand Larceny in the third degree, Forgery in the second degree, Criminal Possession of a Forged Instrument in the second degree and Scheme to Defraud in the first degree.

On February 6, 2008, the Defendant elected to accept a negotiated plea and pled guilty, in full satisfaction of the indictment, to one count each of Grand Larceny in the first degree and Grand Larceny in the second degree. The negotiated plea was conditioned, *inter alia*, upon the Defendant being sentenced to concurrent terms of 4 ½ to 9 years imprisonment and upon the entry of Judgment and Restitution Orders in favor of PHH Mortgage Corporation ("PHH Mortgage") in the amount of \$1,186,250.00, Countrywide Mortgage ("Countrywide") in the amount of \$600,000 and First American Title Insurance ("First American Title") in the amount of \$365,000 (Chapoulie Affirmation, Exhibit 2, Plea Transcript and Exhibit 3, Copies of the Judgments and Orders of Restitution). The defendant was sentenced in accordance with the negotiated plea on March 14, 2008.

The Defendant filed the within motion on February 4, 2013 seeking an order of this court vacating the aforementioned Judgments and Orders of Restitution ordered by this court March 14, 2008. The Defendant contends he is entitled to the relief sought

on grounds that the Judgments and Orders of Restitution have been otherwise satisfied “based upon the credit . . . resulting from the proceeds received by the lender [through sale]”. Defendant contends that, based upon the strength of the record and the evidence, there is no basis to bring PHH Mortgage, Countrywide or First American Title before the court (Defendant’s Affidavit, ¶ 11). The People oppose the relief requested in its entirety.

At the outset, it bears note that the record before this court does not present compelling evidence in support of the Defendant’s motion which is replete with self-serving claims that are largely unsupported by documentary evidence and made wholly without reference to legal authority. Defendant herein has made broad and sweeping claims which directly affect the interests of PHH Mortgage, Countrywide and First American Title, but has deprived each entity notice of the within proceeding and, moreover, has actively encouraged this court to deny their right to be heard.

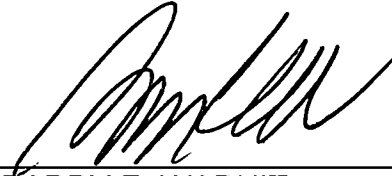
Although the New York State Criminal Procedure Law imbues the court with discretion to remit restitution, the court is authorized to do so only upon notice to the parties to whom the restitution is owed and only after each has been afforded a reasonable opportunity to be heard (CPL § 420.30(2)[b]). Accordingly, this court is without authority even to consider the relief sought absent notice.

For the foregoing reasons and as notice had not been given to any of the parties to whom restitution is owed and none has had the opportunity to be heard on the relevant issues, the Defendant’s motion to vacate the Judgments and Orders of Restitution, entered March 14, 2008 (Hubert, J.) is denied in its entirety and the within

motion is dismissed.

The foregoing constitutes the Decision, Order and Judgment of this court.

Dated: White Plains, New York
May 22, 2013



HON: BARRY E. WARHIT
WESTCHESTER COUNTY COURT JUDGE

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