

People v Moses

2014 NY Slip Op 32198(U)

May 5, 2014

Sup Ct, Kings County

Docket Number: 08189/2001

Judge: Martin P. Murphy

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM PART 40

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

-against-

Decison and Order

:
CPL 440.00
Indictment 08189/2001

JACKIE MOSES :
-----X
JUSTICE MARTIN P. MURPHY

Defendant moves to vacate the judgment of conviction pursuant to CPL 440.10(1)(a)(b)(h) on the grounds that he was denied due process, that his conviction was obtained by fraud, and that the court lacked jurisdiction. Specifically, *defendant* claims that following the reversal of his original burglary convictions, he was afforded neither the new trial nor the new hearing that the appellate court had ordered. He further asserts that his subsequent plea to the “illusive charge of Attempted Burglary” was obtained by fraud and therefore “contends that no disposition was ever reached”. *Defendant* also maintains that his present conviction is invalid because the presiding judge was a judge of the family court without jurisdiction over his case. Finally, as a result of the underlying infirmities in his present conviction, *defendant* insists that his conviction for violating parole is unwarranted.

Defendant's allegations and suspicions apparently arise from two sources. He describes an incident where upon meeting his parole officer for the first time, he was told, “you are not in the computer. I don’t know who you are.” He also appears to extrapolate from the incomplete sentencing minutes that because the record abruptly ends without a sentencing pronouncement,

his new sentence was never actually imposed by the court.

Background

On *April 3, 2004*, *defendant* was convicted by jury verdict of burglary in the second degree; burglary in the third degree; petit larceny; criminal trespass in the second degree; criminal possession of stolen property in the fifth degree; and bail jumping in the second degree. *Defendant* was sentenced as a second violent felony offender to a *concurrent term* of imprisonment of *fifteen years* for the second-degree burglary, *three and one-half to seven years* for the third-degree burglary, and *one year each* for petit larceny, criminal trespass, and criminal possession of stolen property. He was also sentenced *consecutively* to a term of imprisonment of *two to four years* for bail jumping [*Gary, J.*, at hearing; *Balter, J.*, at trial and sentence].

On *April 11, 2006*, *defendant's* judgment of conviction was reversed. [*People v Moses*, 28 AD3d 584 (2nd Dept., 2006)]. The appellate court granted *defendant's* omnibus motion to suppress identification testimony and a new trial was ordered to be proceeded by a hearing to determine the existence of an independent source for the *complainant's* in-court identification of *defendant*. On *September 12, 2006*, the Second Department granted the People's motion to reargue and modified its decision by reinstating *defendant's* conviction for bail jumping. [*People v Moses*, 32 AD3d 866 (2nd Dept., 2006)]. On *December 15, 2006*, leave to appeal to the Court of Appeals was denied. [*People v Moses*, 7 NY3d 927 (2006)].

On *January 22, 2007*, *defendant* pleaded guilty to attempted burglary in the second degree. On *February 9, 2007*, *defendant* was sentenced to a term of imprisonment of *five years* and *five years* of post-release supervision to run *concurrently* to *defendant's* earlier imposed

sentence for bail jumping. An order of protection was issued and *defendant* waived his right to appeal.

Conclusions of Law

In the face of ample documentary proof to the contrary, *defendant's* claims are found to be baseless. The transcript of *defendant's* plea allocution reflects that *defendant* acknowledged his satisfaction with his attorney's performance upon the withdrawal of his plea of not guilty. The record further indicates that *defendant* proceeded to voluntarily, knowingly, and intelligently enter a plea of guilty. *Defendant* admitted his guilt and stated that he was aware of the rights that he was forfeiting and that he accepted the promised sentence in exchange for his guilty plea. Furthermore, the sentencing minutes, which despite being incomplete, indicate that defendant was about to be sentenced as scheduled, because they refer to the negotiated plea and the promised sentence and contain comments by counsel that *defendant* had reviewed the probation report and was ready to be sentenced. In addition, the occurrence and legality of *defendant's* sentence is confirmed by numerous administrative documents such as the court clerk's file entries, the sentencing commitment order, the order of protection, a computerized record of *defendant's* court appearances, and the judge's notes. *Defendant's* allegations and assertions are therefore contradicted by documentary proof to the extent that there is no reasonable possibility that such allegations are true. [CPL 440.30 (4) (i)(ii)].

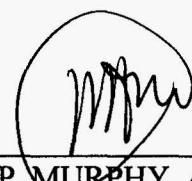
Finally, *defendant's* claim that the court lacked jurisdiction is incorrect. *Article VI*, section 26(f) of the *New York State Constitution* authorizes the temporary assignment of a judge of the family court to the supreme court. Once properly assigned the judge of the family court acquires all of "the powers, duties and jurisdiction" of a supreme court justice. [Art. VI, section

26(k)].

Accordingly, *defendant's* motion is *DENIED* in its entirety.

This foregoing shall constitute the *decision* and *order* of the court.

Dated: Brooklyn, New York
May 5, 2014



MARTIN P. MURPHY, A.J.S.C.

ENTERED
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NANCY T. SUNSHINE
COUNTY CLERK

You are advised that your right to an appeal from the order determining your motion is not automatic except in the single instance where the motion was made under CPL § 440.30(1-a) for forensic DNA testing of evidence. For all other motions under Article 440, you must apply to a Justice of the Appellate Division for a certificate granting leave to appeal. This application must be filed within 30 days after your being served by the District Attorney or the court with the court order denying you motion.

The application must contain you name and address, indictment number, the questions of law or fact which you believe ought to be reviewed and a statement that no prior application for such certificate has been made. You must include a copy of the court order and a copy of any opinion of the court. In addition, you must serve a copy of your application on the District Attorney.

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