People v Brown
2014 NY Slip Op 32605(U)
September 23, 2014
Sup Ct, Kings County
Docket Number: 6349/83
Judge: Thomas J. Carroll

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM, PART 24

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THE PEOPLE OF THE STATE OF NEW YORK — Hon. Thomas J. Carroll

Date: September 23, 2014

-against-

DECISION & ORDER

CARLTON BROWN, — Indictment No. 6349/83

Defendant

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Defendant moves, pro se, to set aside his sentence pursuant to CPL § 440.20 on the ground that he was illegally sentenced to consecutive terms of imprisonment upon his conviction for intentional murder in the second degree and first degree burglary. The People filed an opposition and the defendant filed a reply. For the following reasons defendant's claim is subject to a mandatory procedural bar under the Criminal Procedure Law.

Background

On October 1, 1984, defendant, along with a co-defendant, was convicted upon a jury verdict of two counts of murder in the second degree (PL § 125.25[1],[3]) and one count of burglary in the first degree (PL § 140.30[2]). Defendant and co-defendant had pushed their way into the apartment of Anne Mary Pfreundaschuh at 196 Clinton Avenue in Brooklyn before binding her wrists and ankles to her neck and drowning her in her bathtub with a mixture of water, ink, chlorine bleach and shampoo. They left the apartment with a television set, a hair dryer, a telephone answering machine and a duffel bag.

On October 23, 1984, defendant was sentenced as a second felony offender to concurrent

terms of imprisonment of twenty-five years to life on the murder counts and also to a term of imprisonment of twelve and one-half to twenty-five years on the burglary count to be served consecutively to the intentional murder count (Feldman, J., at trial and sentence). At the time of sentence, the court expressed difficulty fathoming "[w]hy would anyone commit this horrendous crime" nor could it understand a "motive for devising and executing sadistic methods of torturing and eventually killing a defenseless young woman". The court concluded, addressing both defendants, "It is clear that neither of you has within you even a particle of the kind of human feeling necessary for people living in a civilized society".

On November 13, 1989, the Appellate Division affirmed defendant's judgment of conviction (*People v Brown,* 155 AD2d 547 [2d Dept 1989]). In response to defendant's claim that the consecutive sentences imposed on the intentional murder and burglary convictions were illegal, the Court held:

> Contrary to the defendant's claim, it was not error for the sentencing court to direct that the sentence imposed on the burglary count run consecutively to the sentence imposed on the intentional murder count. These crimes consist of separate acts, and concurrent terms of incarceration are not mandated by Penal Law § 70.25(2) (citations omitted).

Leave to appeal to the Court of Appeals was denied (*People v Brown,* 75 NY2d 811 [1990]).

On April 10, 1995, defendant's federal petition for a writ of habeas corpus was denied by the United States District Court for the Eastern District of New York (*Brown v Senkowski,* No. CV 94-3860 [E.D.N.Y. April 10, 1995][Nickerson, J.]).

On November 9, 1998, defendant's motion to vacate the judgment of conviction pursuant to CPL § 440.10 was denied (Feldman, J.). The court rejected defendant's claim that he was denied the effective assistance of counsel.

On March 3, 2008, defendant's motion to set aside his sentence on the ground that the imposition of consecutive sentences was illegal was denied (Guzman, J.). The court held that defendant's motion was procedurally barred because the same issue had been previously determined on the merits on direct appeal (CPL § 440.20[2]). Defendant's application for leave to appeal to the Appellate Division was denied on June 5, 2008.

On June 27, 2008, defendant's second motion to vacate the judgment of conviction was denied (Guzman, J.). The court held that defendant's claim that he was deprived of a fair trial as a result of judicial bias was procedurally barred because although sufficient facts appeared on the record to have permitted adequate review of the issue on direct appeal, defendant failed to raise the issue before the Appellate Division (CPL § 440.10[2][c]).

On October 28, 2008, defendant's motion for writ of error coram nobis contending that he was denied the effective assistance of appellate counsel was denied (*People v Brown,* 55 AD3d 920 [2d Dept 2008]). Leave to appeal to the Court of Appeals was denied (*People v Brown,* 12 NY3d 756 [2009]).

On August 26, 2009, defendant's second motion to set aside his sentence was denied (Chun, J.).

On June 22, 2010, defendant's third motion to set aside his sentence was denied (Tomei, J.). The court rejected defendant's claim that he was incorrectly adjudicated a second felony offender. Leave to appeal to the Appellate Division was denied.

Conclusions of Law

CPL § 440.20(2) provides that a court must deny a motion to set aside a sentence when it is predicated on a ground or issue previously raised and determined on the merits on an appeal taken from the judgment of conviction. In this instance, the Appellate Division rejected the same

claim on direct appeal finding that because the crimes of intentional murder and burglary consisted of separate acts, the imposition of concurrent sentences was not required. Denial of defendant's motion is therefore mandatory under the Criminal Procedure Law (*People v Simmons*, 143 AD2d 153 [2d Dept 1988]; *People v Chapman*, 115 AD2d 911 [3d Dept 1985]). Moreover, since denial is mandatory, there is no need to address defendant's CPL § 440.20(3) argument.

Accordingly, defendant's motion is denied.

This decision shall constitute the order of the court.

ENTER:

J. Thomas Carroll

HON. THOMAS J. CARROLL
THOMAS J. CARROLL
J.S.C.

ENTERED
SEP 2 6 2014
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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