

People v Dorsey

2012 NY Slip Op 32556(U)

September 24, 2012

Supreme Court, Kings County

Docket Number: 3461/96

Judge: Deborah A. Dowling

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MEMORANDUM

SUPREME COURT: KINGS COUNTY
(Criminal Term, Part 1)

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PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER
By: Justice Deborah A. Dowling

-against-

Dated: September 21, 2012

Indictment No:3461/96

LEROY DORSEY,
Defendant(s).
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This matter is before the Court based upon a *pro se* motion filed by the defendant pursuant to CPL §440.20(1) and CPL §440.30(5). The defendant submitted this motion seeking to set aside his sentence imposed on May 1, 1997. The defendant contends the imposed sentence was unauthorized, illegal imposed or otherwise invalid as a matter of law. The People opposed the motion. Based upon the reason detailed herein the defendant's motion is **denied**.

PROCEDURAL HISTORY

On March 15, 1996, the defendant had an argument with his then girlfriend, Andrea Miller. The argument turned violent and the defendant stabbed and slashed Ms. Miller with a knife. Ms. Miller was gravely injured as a result of this altercation and sustained puncture wounds to her upper chest and neck area. As a result of this incident, the defendant was

charged with Attempted Murder along with a number of Assault charges. The defendant was tried by a jury and convicted of Assault in the second degree (Penal Law §120.10(1)). The defendant was subsequently sentenced to sixteen years to life incarceration. The defendant was also adjudicated a persistent violent felony offender at the time of sentencing.

The defendant appealed his conviction arguing the evidence presented at trial was legally insufficient to establish his guilt beyond a reasonable doubt. The Appellate Division denied the appeal, finding the defendant's claims to be without merit. *People v. Dorsey*, 282 A.D. 2d 618 (2nd Dept 2001). The defendant's application for leave to appeal to the Court of Appeals was also denied. *People v. Dorsey*, 96 N.Y.2d 900 (2001).

The defendant then moved before the Court, on May 15, 2001, seeking to vacate his conviction based upon his contention the People's witnesses submitted perjured testimony during the course of the trial. Specifically, the defendant argued the complaining witness, Andrea Miller, did not tell the truth during her trial testimony. The defendant alleged the trial prosecutor knew or should have known the trial testimony presented to jury was false. The Court denied this motion and the defendant appealed the Court's decision. The Appellate Division denied the defendant's leave to appeal.

The defendant then submitted a habeas corpus petition again setting forth similar claims of perjury raised in his motion submitted to the state trial court. The United States District Court for the Eastern District of New York denied the defendant's petition. The defendant then sought to reargue the motion he previously submitted to the state trial court,

on May 15, 2001, some eight years later by papers dated June 4, 2009. Of the claims raised therein, the defendant requested the Court issue an order compelling the complaining witness to submit to a DNA test to determine whether the complaining witness smoked crack-cocaine. In a decision, dated August 19, 2009, the Court denied the defendant's motion. The court found the defendant's allegations baseless.

On June 1, 2010, the defendant again submitted an appeal to the Appellate Division for a writ of coram nobis. The Appellate Division denied the defendant's motion and the defendant again submitted a motion to this Court seeking to set aside his conviction based upon newly discovered evidence. The defendant also contends he is entitled to a reconstruction hearing based upon his belief the court file in this matter is irretrievably lost.

CONCLUSIONS OF LAW

Criminal Procedure Law section 440.20 provides, in pertinent part, a defendant may seek to set aside his/her sentence, at any time after entry of judgment, upon the grounds that the sentence was unauthorized, illegally imposed or otherwise invalid as a matter of law. Additionally, Penal Law section 70.02(4) specifies a defendant must be sentenced according to the law as it existed at the time of the defendant's crime.

Here, the evidence established the defendant was sentenced in accordance with the law as it existed at the time of his crime. While the defendant contends his sentence is unauthorized, there is no basis to find the sentence was unauthorized, illegally imposed or unlawful under the law. The defendant was adjudicated as a persistent felony offender and

properly sentenced to sixteen years to life incarceration.

The purpose of a motion to renew is to afford a litigant an opportunity to submit new or additional facts which existed at the time of a prior motion, but were not known to the party seeking renewal and, consequently, unknown to the court. However, a motion to renew does not serve as a vehicle for the unsuccessful moving party to argue the very questions previously decided. The defendant offers no new evidence which would warrant vacating the defendant's duly imposed sentence.

This current motion is a reiteration of the defendant's previous motions and appeals which the state, federal and appellate courts have found wanting. The defendant proffers nothing new regardless of the myriad papers set forth. The defendant's case has been reviewed by state, federal and appellate courts, each of which have found the defendant's arguments lack merit. In this motion, the defendant fails to set forth a meritorious claim. The defendant's post-conviction pattern has been one of a persistent pattern of motion and appellate practice. However, the defendant's claims at every level fail to substantiate grounds for the requested relief. There is no basis in the record to find the witnesses in this case submitted perjured testimony. Similarly, there is no legal basis to conduct a reconstruction hearing in the instant matter. Accordingly, the defendant's motion is denied in its entirety. It is hereby,

ORDERED, the defendant's motion is denied in its entirety. It is further,

ORDERED, the defendant's right to appeal from this order 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 your motion. It is further,

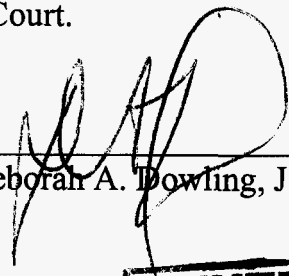
ORDERED, the application must contain your name and address, indictment number, the questions of law or fact which you believe ought to be reviewed and a statement that no prior application for such certificate has been made. You must include a copy of the court order and a copy of any opinion of the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

APPELLATE DIVISION, 2ND Department
45 Monroe Place
Brooklyn, NY 11201

Kings County Supreme Court
Criminal Appeals
320 Jay Street
Brooklyn, NY 11201

Kings County District Attorney
Appeals Bureau
350 Jay Street
Brooklyn, NY 11201

This shall constitute the decision and order of the Court.



Deborah A. Dowling, J.S.C

ENTERED
SEP 24 2012
NANCY T. SUNSHINE
COUNTY CLERK