MEMORANDUM

SUPREME COURT - KINGS COUNTY - CRIMINAL TERM - PART 7

	: By: NEIL JON FIRETOG, J.S.C.
THE PEOPLE OF THE STATE OF NEW YORK,	**: Dated: January 23, 2014**
-vs-	
	: Indictment #10065/90
MAURICE BRYANT,	
Defendant.	**:**

Appearances: District Attorney's Office
By: Keith Dolan, Esq.

Defendant, *Pro Se*

Subsequent to his conviction in April 1991, defendant embarked on a continuing course of litigation, albeit unsuccessfully, that persists to this day. The repeated motions to vacate his conviction, writs of habeas corpus and appeals have all been rejected, but defendant is not deterred in his quest to have his conviction vacated, raising additional grounds with each motion. This decision comprises the court's order on two pending motions.

In the first of the present motions, the defendant alleges that he received ineffective assistance of counsel, based on counsel's failure to advise defendant to take a plea, citing *Missouri v. Frye*, 132 S.Ct. 1399. That motion was pending before another judge of this court, but remained undecided for eight months before being referred to the undersigned. In the second motion, defendant alleges that there were irregularities in the jury that resulted in a violation of defendant's constitutional rights. The People oppose both motions in separate affirmations. For the reasons stated below, both motions are denied in their entirety.

At the outset, the court notes that the earlier motion can be denied on procedural grounds alone. Pursuant to CPL §440.10(3)(c), the issue of ineffective assistance of counsel could have been raised on one of defendant's many previous motions, yet he inexplicably failed to do so. Although the *Frye* decision involves the specific issue of the communication to a defendant of a plea offer by counsel, that case did not create a change in the law, but appears to have restated existing standards for ineffective assistance of counsel claims. As pointed out by the People, New York law permitted a claim such as defendant's to be considered prior to the decision in *Frye*. *See, People v. Fernandez*, 5 N.Y.3d 813 (2005), *People v. Rogers*, 8 A.D.3d 888 (3rd Dept, 2004).

Setting aside the procedural impediment, the court will consider the motion for the completeness of the record. Nevertheless, after considering all the allegations made by defendant, there is no merit to the motion under the criteria set forth in *Frye*. In order to prevail on such a motion, the defendant must show that a plea offer was made, that counsel failed to inform him of the offer and that the defendant would have been willing to accept that offer. *See, People v. Goldberg, supra.*

At the Criminal Court arraignment, the minutes of which defendant appended to his motion papers, defendant was represented by court-appointed counsel, and a pre-indictment plea offer was made by the People on the record. Then-counsel advised the court that defendant would be retaining counsel and requested that the pre-indictment offer be kept open until retained counsel could appear. The court expressed its opinion that the offer was not a suitable one based on the facts and circumstances and stated that he would recommend against the plea to the AP-1 judge. Ultimately, defendant proceeded to trial and was convicted of attempted murder in the first degree.

In order to prevail on this claim of ineffective assistance of counsel, defendant must show that a plea offer was made, that counsel failed to inform him of the offer and that he would have been willing to accept the offer. *People v. Fernandez, supra,* citing *People v. Rogers, supra.*

It is clear from the record that a plea offer was actually made by the People. It is also abundantly clear that the defendant was present when the offer was made and heard the court unequivocally state that it would not accept that plea and that the court would recommend against the plea to the AP-1 judge. (Tr. p. 3)

Defendant's claim that retained counsel never discussed the plea offer with him is also meritless. The only support for that allegation are defendant's own self-serving assertions, which are unsupported by any credible evidence. Defendant appears to propose that because trial counsel was admonished in 1988 and 1989 for certain deficiencies, and was subsequently disbarred, the court should logically draw the inference that counsel was ineffective in this matter. However, there is no indication whatsoever that the admonitions or disbarment were related to counsel's conduct in this case.

More damaging is defendant's fanciful assurance to this court that he would have relinquished his claim of innocence and taken the plea. His papers contain an absolute assertion of his lack of involvement in the shooting and the police officer's "fabricated allegations" of defendant's identity as the shooter. And yet, defendant insists that if counsel had explained to him the evidentiary requirements for conviction, he would have accepted the plea offer. This is so, he alleges, because on another case pending at the same time as the instant one, he accepted a plea offer after discussing it with other inmates.

Because defendant's allegations fail to establish his entitlement to the relief requested, the motion to vacate the conviction based on ineffective assistance of counsel must fail.

Defendant's second pending motion to vacate his conviction is based on allegations of misrepresentation and juror fraud, resulting in a violation of his right to a fair trial.

This motion is procedurally barred as well, the defendant having had many opportunities to bring this issue to the fore in his numerous motions. CPL §440.10(2)(c) and (3)(c). No rational reason exists for his failure to do so.

In this motion, defendant alleges that the District Attorney's Office engaged in an act of juror fraud by the apparent substitution of the forewoman of the jury by another woman who was a "plant". Defendant further states that this substitution could not have occurred without the knowledge and cooperation of the Assistant District Attorney and the judge. In his attempt to gild the lily, defendant alleges that the trial judge, Hon. Sheldon Greenberg, resigned as the result of a corrupt judges scandal in Brooklyn, which is entirely unsupported by any credible evidence whatsoever and, to this court's knowledge, wholly untrue. He also cites a case purporting to show that Judge Greenberg was arrested in the late 1960's in a gambling case. Indeed, someone named "Sheldon Greenberg" appears as a defendant in the case cited, but the record is utterly devoid of any connection between the judge and that defendant. This is but one part of defendant's campaign to impugn the reputation of the court and the prosecutor, in aid of his motion.

Additionally, defendant mentions that defense counsel was disbarred, which is not in any way relevant to this motion, the conduct resulting in the mispronunciation having no connection to his actions at defendant's trial. Defendant then goes on to propose that comments appearing in a book written by Michael Vecchione, Esq., formerly an Assistant District Attorney, "may very much be the reason why said acts of **Fraud** was committed in the defendant's case"(*sic*).

Defendant confidently asserts that a person named "Andrea Titch" was selected as juror #1, the foreperson of the jury. During deliberations, notes from the jury were signed by "Ann Goetcheus", leading defendant to the conclusion that Andrea Titch was a fictitious person and that Ann Goetcheus was fraudulently planted on the jury with the knowledge and cooperation of the judge, the prosecutor and defense counsel.

As part of a reconstruction hearing ordered by the Appellate Division, ADA Jeff Kerns testified about the *voir dire* from his notes, made during the jury selection process, that the first juror selected was a "Miss Getchis". He added that this was a phonetic spelling of the juror's name. In the People's answer to the motion, the Assistant District Attorney points out other mispronunciations and/or misspellings of

other juror's names. It is entirely feasible, and most likely, that no nefarious conduct occurred, but rather the clerk pronounced the juror's names improperly, or the court reporter transcribed them improperly. In either event, it strains credulity to believe that such a fraud took place.

In reviewing defendant's allegations, the court finds that he proposes a conspiracy so vast in its scope as to be breathtaking. Not only would the scenario he urges involve the prosecutor and the judge, it would require the complicity of all the court personnel, including the court clerk, the court officers and the court reporter to succeed. That possibility is far to complicated to be correct. The court is reminded of the concept of Occam's razor, which proposes that when there are competing hypotheses, the simplest one is the most probably accurate. To find defendant's allegations to be true, the court would have to engage in theoretical gymnastics that are far to complex to be likely. As such, the court finds defendant's tortured logic to be without any legitimate basis and insufficient to warrant vacatur or even a hearing on the motion.

In proposing his conspiracy theory, the defendant utterly ignores the evidence adduced at the 1995 reconstruction hearing, as well as the court's rejection of his mother's testimony regarding the alleged misconduct of the Assistant District Attorney.

Finally, in his rebuttal affidavit, defendant goes even one step further in urging the court to be mindful of the 40th anniversary of Watergate, stating that he had been "...informed that the Ann B. Goetcheus who's in question, has been linked to the "Watergate" scandal/hearings of Richard M. Nixon". Again, no rational support exists for the truth of defendant's allegations, and they are extremely unlikely to be true.

As such, there being no legal basis for granting any of the relief sought in either motion, the motions are both denied in their entirety.

ENTER:

NEIL JON FIRETOG, J.S.C.

ENTERED

FEB 11 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 your motion.

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 District Attorney.

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