

People ex rel. Mills v Colvin

2018 NY Slip Op 33648(U)

August 28, 2018

Supreme Court, Seneca County

Docket Number: 51349

Judge: Daniel J. Doyle

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT COUNTY OF SENECA

The People of the State of New York
ex rel. RICHARD MILLS
DIN # 02-B-0778,

Petitioner

DECISION AND
JUDGMENT

For a Judgment pursuant to Article 70 of
the Civil Practice Law & Rules

-against-

Index No. 51349

JOHN COLVIN, SUPERINTENDENT
FIVE POINTS CORRECTIONAL FACILITY,
Respondent

The petitioner herein has filed a motion pursuant to CPLR 5015, seeking to be relieved from an order of this court made in August, 2017, denying the petitioner’s application for a writ of habeas corpus. As noted by the petitioner himself, he has made numerous applications to this Court, as well as the federal courts, seeking to vacate his judgment of conviction for Attempted Murder, Attempted Assault and other crimes. His recurring allegations surround his claims the trial court lacked jurisdiction, that there was impropriety because the presiding Judge did not adequately explain his relation to assistant prosecutors in the District Attorney’s office, and that there were schemes to defraud by the Appellate Division, Fourth Department, the New York State Attorney General and private attorneys. Most of the allegations in the petition are identical to allegations in the petition for a writ of habeas corpus that the petitioner filed under Index 52273, which was denied by this court on August 7, 2018.

The petition to be relieved from the Court’s previous decisions in this matter are denied, because the petitioner has failed to show newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered


in time to move for a new trial under CPLR 4404, or fraud, misrepresentation or other misconduct of an adverse party, or that there was a lack of jurisdiction to render the judgment or order, or that there was a reversal, modification or vacatur of a prior judgment or order upon which it is based. As noted previously, courts have already rejected the jurisdictional arguments and the other arguments the petitioner has raised have already been ruled upon as lacking merit, or could have been raised directly upon appeal.

The petitioner further seeks to have the undersigned recuse himself from hearing this application, but the Court finds no basis for such recusal, and in the undersigned's discretion, denies the request for same. This Court has no authority to grant the petitioner's request that "any tribunal connected within the Fourth Department's jurisdiction" also be recused from hearing this application, or any application by the petitioner. The Court also finds no merit to the petitioner's argument that his motion to amend his dismissed petition should have been filed, and not returned to him. His petition had been dismissed, and was under appeal. There was no pending petition to amend, and the motion to amend was returned to him for that reason.

Lastly, the petitioner asks this Court to vacate its May 31, 2018, order settling the record on appeal of the Decision and Judgment in this matter. This was relief requested by the petitioner's appellate counsel and the Court finds no basis for vacatur.

The motion is in all respects denied and dismissed. This constitutes the Decision and Order of the Court.

August 8, 2018



Hon. Daniel J. Doyle