

Ex. 41

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CRIMINAL TERM: PART 32
-----x

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DOMENIC FRANZA,

Defendant.
-----x

Indict. No.
Decision

111 Centre Street
New York, New York 10013

October 19, 1998

B E F O R E:

HONORABLE PAUL P.E. BOOKSON
Justice

RECEIVED
DISTRICT ATTORNEY
NEW YORK COUNTY
OCT 21 10 AM '98

RECEIVED

OFFICE OF THE CLERK OF THE SUPREME COURT
COUNTY OF NEW YORK

Lisa Kramsky, CSR, RPR
Official Court Reporter

99

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Defendant stands convicted of three counts of Attempted Murder and one count of Criminal Possession of a Dangerous Weapon in the First Degree for which he is serving a sentence of twenty-eight to eighty-four years.

Defendant has appealed his conviction to the Appellate Division, First Department where it is pending. Defendant now moves pursuant to C.P.L. 440.10 to set aside this judgment, making a litany of claims which more or less track the statutory language. This motion is made pro se, yet, I have assigned defendant's appellate counsel to assist him with this 440.10 motion. The People oppose both a hearing and the ultimate relief defendant seeks.

This Court is wholly familiar with the trial and the evidence presented, as well as the comportment of counsel on both sides of the aisle.

Defendant's claims for a hearing or a new trial are based largely on completely unsubstantiated charges of fraud and.

A-100

1
2 collusion leveled against the D.A. and
3 defense counsel, alleging fabricated, altered
4 and withheld evidence resulting in his
5 conviction. Attendant to this are claims of
6 ineffective assistance of counsel. In
7 addition, defendant asserts through a
8 byzantine re-analysis of the People's
9 evidence at trial that he could not logically
10 be guilty.

11 Defendant's motion is denied in all
12 respects. Firstly, C.P.L. 440.10 (2)(b)
13 mandates denial when, "The judgment is, at
14 the time of the motion, appealable or pending
15 an appeal, and sufficient facts appear on the
16 record ... to permit adequate review thereof
17 upon such appeal ..."

18 As defendant's case is on direct appeal
19 and no grounds exist to necessitate a hearing
20 to enlarge the record, the motion is denied.
21 The Court also notes that a review of the
22 record at trial indicates that all of
23 defendant's specified claims are without
24 merit. Defendant's claims of a conspiracy
25 between counsel to convict him are nothing

A-101

Decision

1 but self-serving, wishful thinking. In fact,
2 both the Prosecutor and defense counsel did
3 exemplary work at trial. Finally, the
4 evidence of defendant's guilt was over-
5 whelming. Motion is denied in all respects.
6 So ordered.
7

8 *

9 *

10 *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A-102