

THE PEOPLE OF THE STATE OF NEW YORK
Respondent,
-against-
DOMINIC FRANZA,
Defendant-Appellant.

AFFIRMATION IN OPPOSITION
TO DEFENDANT'S MOTION

~~RECEIVED~~
N.Y. Co. Ind. No. 11987/91

Return Date: October 4, 1996

APPELLATE DIVISION, SUPREME
COURT, FIRST DEPARTMENT

ALAN GADLIN, an attorney duly admitted to practice before the courts of this State, affirms under penalty of perjury that:

1. I am an Assistant District Attorney, of counsel to ROBERT M. MORGENTHAU, District Attorney of New York County, and I submit this affirmation in response to a series of pro se motions by the above defendant seeking three different forms of relief. More specifically, defendant seeks: 1) to file numerous paper exhibits in support of his appeal from the denial of a CPL Section 440.10 motion, which he claims were part of the record in the lower court; 2) an order precluding the People from filing a respondent's brief and appearing at oral argument of this case; and 3) an order of summary reversal, apparently on the ground that some unspecified, egregious prosecutorial misconduct occurred in this case.

2. The People take no position with respect to the first motion above, but oppose defendant's other two motions. Assuming that, as defendant states, the documents he submits were part of the record before the lower court on his motion to vacate, then the People agree that they should properly be part of the record on his appeal from the motion. However, whether the copies of the

documents are authentic and unaltered, and their import as far as defendant's appeal goes, can only be determined after a review of the entire record in this case, and the People make no concession here as to those issues.

3. Defendant also claims that the People should be precluded from filing a brief and appearing in opposition to his appeal because they failed to file a respondent's brief by September 4, 1996, the date which defendant insists was the deadline for their response. However, defendant is simply wrong about the due date for the People's brief. By an order dated July 25, 1996 [M-3904], this Court adjourned the appeal to the December 1996 Term of the Court; thus, under this Court's official term calendar for 1996, the respondent's filing date for that term is October 30, 1996. Defendant now asserts that because the language the Court's order used was, "Argument of the appeal is adjourned to the December 1996 Term of this Court," the Court only meant to place the argument in the December Term, not to change the filing date. That claim is ridiculous. Indeed, the Court's order in no way indicated that the briefs in the case would be due on any other dates than the ones for the December 1996 term, to which the case was adjourned, and this Court can take judicial notice that typically both arguments and the due dates of the briefs for the parties are adjourned together in this manner.

4. Defendant's argument for a summary reversal of his conviction is equally frivolous (see Motion dated August 21, 1996). Defendant states that the District Attorney's office should be ordered to move for "immediate dismissal" in order to "preserve


their integrity," and that this Court will undoubtedly find that "the evidence and testimonies were fraudulent" (§§ 5, 9). He also claims that he is incarcerated pursuant to a "fraudulent conviction and Grand Jury proceeding," and that any response in opposition to his appellate filings from this office would be "criminal in nature."

5. These claims are simply absurd, particularly given that defendant's appeal has not yet been briefed by both sides. Defendant in essence asks the Court to trust him that his conviction is illegal and toss it out. However, a review of our files indicates that defendant's assigned appellate counsel, Perry Reich, has asked to be relieved because Reich is secretly working for the District Attorney's office against defendant. Defendant's claim about the illegal nature of his conviction is just as credible as that bald allegation against his attorney. Defendant cites not a shred of evidence to support it, points to no facts in the record to support it and, besides labelling it "fraudulent" and unfair, does not even make a specific legal claim which would undermine his conviction. Under the circumstances, the resolution of the question of the fairness of defendant's conviction is certainly best left to a full briefing of the legal issues after the record in the case is reviewed and properly summarized by both sides. Only then can the Court get a realistic view of the circumstances of defendant's conviction, the evidence against him, and the legal issues he raises on appeal.

WHEREFORE, the Court should respectfully accept defendant's motion exhibits to the extent they were before the court that

denied the motion at issue on appeal. In all other respects, however, defendant's motions should respectfully be denied.

Dated: New York, New York
September 30, 1996


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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK

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AFFIDAVIT OF SERVICE

Ind. No. 11987/91

Anne N. Arkush, being duly sworn, deposes and says that:

I am not a party to the within action, and I am over eighteen years of age.

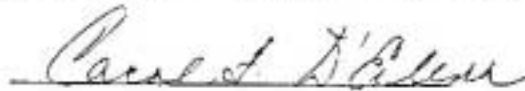
On September 30, 1996, I served a copy of this Affirmation in Opposition to Defendant's Motion on the parties and persons below at the addresses below, by mailing the copy in U.S. mails, in a first-class, postage-paid wrapper, addressed to said persons.

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Perry Reich, Esq.
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Sworn to before me this
10th day of Nov, 1996



CAROL F. D'ELENA
Notary Public, State of New York
No. 01D 4844147
Qualified in Kings County
Certificate Filed in New York County
Commission Expires 11/30/1997

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