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Supreme Court  
of the  
State of New York

Part 48\*-New York County

-----X  
The People of the State of New York

INDICTMENT: 11987-91

MOTION FOR: CPL § 440.10

CALENDAR DATE: November 3, 2005

Dominic Franza,  
Defendant

-----X  
Ordered that upon the papers submitted, this motion is hereby

GRANTED \_\_\_\_\_

DENIED \_\_\_\_\_

Date

3/20/06

PT. 48 MAR 20 2006

Hon. *Arlene R. Silverman*  
\_\_\_\_\_  
HON. ARLENE R. SILVERMAN

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 48

\_\_\_\_\_  
THE PEOPLE OF THE STATE OF NEW YORK

- against -

Indictment #11987-91

DOMINIC FRANZA,

Defendant.

\_\_\_\_\_  
HON. ARLENE SILVERMAN, J:

The defendant has moved pursuant to CPL 440.10 to vacate the judgment against him, alleging primarily that the judgment was procured by misrepresentation and fraud on the part of the prosecutor.

This motion is the latest in a lengthy legal history, originating with defendant's conviction for multiple counts of attempted murder and criminal possession of a weapon. The defendant was tried before Justice Bookson and a jury in 1992 and following his conviction, filed an appeal with the Appellate Division First Department. He also filed his first CPL 440 motion with Justice Bookson. The Appellate Division affirmed the conviction and the denial of CPL 440 relief (People v. Franza, 239 AD2d 201 (1997)). Leave to appeal to the Court of Appeals was denied (90 NY2d 904 (1997)); leave to reargue before the Appellate Division was also denied.

As detailed in the motion papers, the defendant made numerous subsequent motions in both state and federal courts seeking, among other things, coram nobis relief,

writs of habeas corpus, appeals from denial of these motions, and reargument of the motions. None of the relief sought in any court has been granted.

This Court has carefully reviewed the voluminous file and detailed allegations contained in the moving papers. Based upon the documents herein, I find no credible basis for the defendant's claim of fraud and misrepresentation on the part of the prosecution. This Court concurs with the People's position that defendant's claims are essentially "a litany of self-serving, unsubstantiated and, often times, incomprehensible . . . claims" (People's Affirmation and Memorandum in Opposition, p. 53). There does not appear to be any basis whatsoever for his charges that crime scene photos, medical evidence and other documents were falsified.

The defendant's motion includes pages of alleged "fraudulent material" (Defense Affidavit, p. 13-61), along with his analysis questioning the accuracy or truthfulness of the evidence. As noted previously, these are basically a long list of arguments and claimed contradictions that in no way constitute concrete, credible examples of fraud on the part of the prosecution or any other individual. From this Court's review of the record, it appears that the defendant received a fair trial during which his counsel competently explored the evidence and pointed out relevant inconsistencies and/or weaknesses in the People's case.

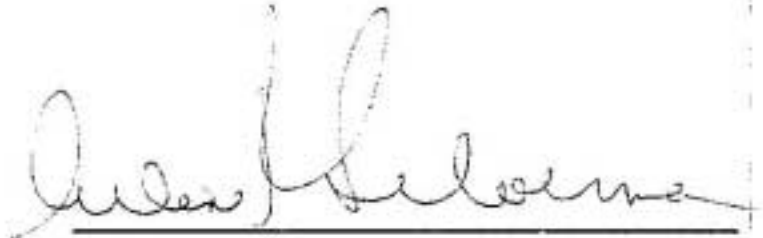
Every point raised in this motion was either raised and rejected in one of the defendant's earlier motions and appeals or it could have been raised therein (CPL 440.10(2)(a), CPL 440.10(2)(c), CPL 440.10(3)(a), CPL 440.10(3)(b)). In particular, I note

that defendant's earlier claims of ineffective assistance of counsel and fraud or misrepresentation on the part of the prosecution were rejected by every court in which these assertions were made. This Court finds no credible basis on which to disturb these earlier findings or rule differently upon the instant motion.

Accordingly, defendant's motion to vacate the judgment is, in all respects, denied.

Dated:

3/20/06  
PT. 48 MAR 20 2006



J. S. C.

HON. ARLENE R. SILVERMAN