

Ex. 3

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
JAN 10 AM 12 13
CRIMINAL JUSTICE
NEW YORK UNIVERSITY

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
Defendant's motion is denied in all
respects. Firstly, C.P.L. 440.10 (2)(b)
mandates denial when, "The judgment is, at
the time of the motion, appealable or pending
an appeal, and sufficient facts appear on the
record ... to permit adequate review thereof
upon such appeal ..."

As defendant's case is on direct appeal
and no grounds exist to necessitate a hearing
to enlarge the record, the motion is denied.
The Court also notes that a review of the
record at trial indicates that all of
defendant's specified claims are without
merit. Defendant's claims of a conspiracy
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