SUPREME COURT OF THE UNITED STATES DOCKET# 18-7437
SUPREME COURT OF THE UNITED STATES

Damilola Animashaun – petitioner

v

Detective William Schmidt; Detective Alex Arty; Detective Perez; Detective Viggiano; New York Police Department (Brooklyn North Warrant); New York Police Department 73rd precint; Seargent Sandhu Jaspreet of the 73rd precint; Detective Joseph; Seargent Depestre of the 73rd precint; Seargent Matthews of the 73rd precint; Lisa Nugent (prosecutor); District Attorney's office – Defendants

On petition for a rehearing on the March 18th 2019 denial order made by The Supreme Court of The United States. The Supreme Court of The United States on March 18th 2019 denied the petitioner herein's Petition for a writ of certiorari filed in The Supreme Court of The United States.

Petition for a rehearing

Prosé litigant petitioner Damilola Animashaun

PROVISIONS, CITATIONS (References)

Malicious prosecution of the 4th Amendment of The United States Constitution of America.
4th Amendment of the United States Constitution of America (U.S.C.A.4. Amend).
8th Amendment of the United States Constitution of America (U.S.C.A.8. Amend).
14th Amendment of the United States Constitution of America (U.S.C.A.14. Amend).
42 U.S.C. 1983.
Initial filed complaint found in: Eastern District Docket# 17-4297, Court of Appeals Docket# 18-562, The Supreme Court of the United States Docket# 18-7437.
For references to the New York Police Department's Detectives, Victims, Judges, Defense Counsels testimonies and complaints on alleged incidents (on the cases of indictment 2589/2011 and indictment 2607/2011, see pretrial transcript of indictment 2607/2011 also see trial transcript of indictment; 2607/2011 and See Court files of indictment# 2589/2011 also see Court files of indictment# 2607/2011.
For references to I the petitioner's testimony on the involuntary written statements as a result of the 4th Amendment of The United States Constitution violation and I the petitioner's testimony on the initial arrest on 3/28/2011 and the entirety of the 3/28/2011 day at the precints giving involuntary written statements; Video statements by accounts giving to I by the Detectives of the cases in indictment #2589/2011 and indictment# 2607/2011 and the testimony by I on the Detectives physically attacking I by grabbing my neck area of my attire; see trial transcripts of indictment 2607/2011.

The citations aside from the federal law citations are relevant and necessary to the argument since they provide the location to where the supporting evidence are at in the interest of ease.

artment while he had I in a tight bear hug! And then slamming I against the wall inside of my apartment. Detective Schmidt then placed I in handcuffs without any struggle at all. There was no reason whatsoever to believe that there was a "Detective" knocking on my door since Detective Schmidt hid his identity. As Detective Schmidt testified on testimony of trial of indictment 2607/2011 he did want to show his identity so that is why he hid and did not say anything to my inquiries on whom is knocking on 3/28/2011. Detective Schmidt then radioed for Detective Viggiano to come upstairs to the apartment (telling Viggiano on the radio that he did as of the moment obtain an arrest in the apartment of 3B) 3B. As Viggiano got upstairs to the apartment 3B, Viggiano entered stating to the awaking family members whom got woken up due to the fact of the unreasonable knocking and intercom ringing to go to the living room area to stand still, until the search is over with that he was to conduct at that given period. Detective Viggiano searched my entire apartment without any warrant summing up to no illicitness found at all. Both Detectives Schmidt and Viggiano then transported I to the awaiting van. The third Detective whom was present (at trial see schmidt's testimony of indictment 2607/2011) at that 3/28/2011 day as Detective Schmidt testified on testimony of trial of indictment 2607/2011 he was positioned at the rear of the building watching the windows and fire escapes. Controlling the movements of I further. But upon I being brought from my apartment and then arriving at the awaiting van, the third Detective whose name is Perez joined both Detectives into the awaiting van. I was then transported, to the other location in Brooklyn, NY where another arrest of another person took place. In where the other arrestee was brought inside the same van I was inside (I was left alone however while the 3 Detectives left to obtain the arrest of the other person). The Detectives then transported I to the 73rd precint. At the 73rd precint, Detectives physically grabbed my neck area by my attire and told I that I must write statements on every crime that any Detective whom I come in contact with that day of 3/28/2011 tell I information on to include on written statements[2]. And that also I must sign the miranda sheet[2]. Furthermore, if I do not oblige to the orders that I will undergo more physically influenced attacks as the one I was under at that present moment while I was under physical attack by the Detectives. Furthermore, I was promised that I will be allowed to go home on that day of 3/28/2011 once I write incriminating statements against I. I eventually signed the miranda sheet with my initials (however I did decline a second time to sign the miranda sheet and requested for an attorney through a phonecall but I was denied of the phonecall.[2] And the Detectives came in the interrogation room to grab I physically by my neck area of my attire again threatingly to sign the miranda sheet and to write statements. Because I was scared upon the second physical attack I cooperated against my will to incriminate myself in statements (that obtained arrests of indictment 2607/2011 of 3 cases in which such arrests were not planned for to be obtained on 3/28/2011), that obtained the arrest of the Robbery case of indictment 2589/2011 (Robbery case of indictment 2589/2011 is the only case found to be in this Supreme Court of the United States Docket 18-7437). The prosecutor Lisa Nugent was then called in to arrive at the 77th precint at about 9:45pm on 3/28/2011. She was called in to uptake the interview via Video recording concerning the statements written by I (involuntarily). Because the earlier Detectives instructed I to confess to the crimes alleged against I or else I will be physically attacked I reiterated the accounts on the statements which incriminated I of guilt (on the 3 cases found in the indictment of 2607/2011) in the Robbery case of indictment 2589/2011, in the video interview cond-

Ucted by prosecutor Lisa Nugent. Ms. Lisa Nugent and the Detectives on 3/28/2011 failed to investigate on the validness of the upbringing of I from my apartment if whether there was any warrant issued for the all of the arrests of bringing I from the inside of my apartment. If such investigation did get performed then the findings that no warrant was issued would had been known to put a halt to the detention in the custody of the police precint on 3/28/2011. Also the Robbery case of indictment 2589/2011 did not have any probable cause[3] to arrest anyone (not even I) for probable cause was not available to arrest I in the Robbery case of indictment 2589/2011. So the probable cause issue would had been available upon the proper investigation if done on the findings on the authority to have I brought from my apartment on 3/28/2011 to the precint. Both the Detectives and the prosecutor did not prohibit the detention taken place at the precint upon the proper investigation of findings on the absent warrant to bring I from the inside of my apartment and the absent probable cause in the case of the Robbery case of indictment 2589/2011 to issue an arrest. It is to say since the detention kept on going on, the proper investigation did not occur on the warrant issue and the probable cause issue which is found in the upbringing of I from my apartment on 3/28/2011. It is to further state that the prosecutor and the Detectives worked together to prosecute the indictment 2589/2011 of the Robbery case. The indictment 2589/2011 however did get dismissed by the prosecutors on 5/12/2012 (that is the indictment 2589/2011 of the Robbery case). And it was to favor I. I was incarcerated on the Robbery case of indictment 2589/2011 from 3/28/2011 through 5/12/2012. However, because the Robbery case of indictment 2589/2011 is the only reason that I was brought from my apartment on 3/28/2011 to the precint, and the arrests on the 3 cases of indictment 2589/2011 were obtained thereafter of arriving at the precint on 3/28/2011, the illegal arrest and search of the Robbery case of indictment 2589/2011 is the reason that I am under current servitude of the sentences of 2 cases of indictment 2607/2011 while the third case of indictment 2607/2011's sentence has been served through time duration elapse. It is to state that in inclusion the court there may look at trial testimony of indictment 2607/2011 of pretrial record offered by Detective Arty stating that of Arty's testimony that it is true that the upbringing of I from my apartment on 3/28/2011 was only based on the Robbery case of indictment 2589/2011; see page 85 line 1-2; see page 84 line 11; see page 85 line 1-2 of trial transcript of indictment 2607/2011: It was not until I got to the precint did Arty realize that there were 2 I-cards issued on 2 cases of indictment 2607/2011, did he only call in those Detectives assigned to those 2 cases, to arrest I on all the cases of indictment 2607/2011 upon the misconduct of incriminating myself in statements. Furthermore, because of Duress, my pretrial defense Counsel did no bringing up of any warrant issue nor object to the erroneous ruling of no reliable supporting evidence of ruling that a warrant existed in the 3/28/2011 arrest. My pretrial defense Counsel in fact did not know of any "warrant" issue. In fact he failed to demonstrate on pretrial of indictment 2607/2011 that I was brought from the inside of my apartment on 3/28/2011. The issue of 4th Amendment Violation of The United States Constitution that the pretrial defense Counsel only raised was that there was no reason of I on 3/28/2011 to be brought to the precint from "whereever" I was at on the Robbery case of indictment 2589/2011 Since there was no probable Cause in the Robbery case, period! And further that there was no identification obtained of I by the victim of the Robbery case of indictment 2589/2011. So because of the erroneous ruling of the pretrial Judge of indictment 2607/2011 which also ruled on no reliable supporting evidence that there was probable Cause in the Robbery case of indictment 2589/2011, (and that there is a warrant issued for the 3/28/2011 arrest; see page 129 line 1-4 of pretrial record of indictment 2607/2011) the

illegal statements obtained thereafter of the unwarranted search and seizure on 3/28/2011 were brought to court of the Supreme Court of the State of New York of Kings County's trial court and used during trial as well as a line up identification which also was obtained thereafter the unwarranted search and seizure of 3/28/2011 (the line up identification was on the statement that placed I on the scene of the crime although the victim of the crime Stephanie Ortiz mentioned in the instant complaint that a b'l White Hispanic bald headed male is her perpetrator contradicting the initial identification while the detective of the assigned case of Stephanie Ortiz told Stephanie Ortiz to disregard the skin complexion, facial hair and hair of the line up subjects 1-6 of I being #5 while Stephanie Ortiz selected her alleged attacker. The procedure was suggestive. Also it is seen as Stephanie Ortiz identifying the wrong person at the line up nevertheless, with contradicting identification before I wrote the incriminating account which placed I on the scene of the crime. And with her being told to disregard significant factors such as skin complexion, facial hair and hair. With disregarding such significant factors it will be difficult for the victim to select an attacker when the initial description of her attacker is of a different skin complexion than those at the line up; See Haffenden's trial testimony of indictment 2607/2011 where he testifies that he indeed told Ms. Ortiz to disregard such significant factors of skin complexion, facial hair and hair; and that he did not investigate Ms. Ortiz as to whom the b'l White Hispanic bald headed male is that she initially described on the first complaint. It is to state that Ms. Ortiz's true attacker is the b'l white Hispanic bald headed male. Ms. Ortiz however, to show my innocence, did not select I during the trial court's identification process although with the suggestiveness during the line up identification process Ms. Ortiz selected I as the attacker while I am innocent). The evidences used during trial did not do I any Justice but added very heavy weight to the Jurors, since during Jurors deliberations the Jurors did request for a second inspection of reading (reading of the statements) of the statements and upon reading the statements I was found guilty of charges of the 3 cases found in indictment 2607/2011 and convicted although the other case of Ms. Jones which adds to the other 2 cases in total making 3 cases of indictment 2607/2011 I plead guilty to. The plea was taking by I involuntarily since the contract agreement agreed upon through payment of United states Dollars of performing his duties of counsel on the 3 cases of indictment 2607/2011 was breached. At the moment the Ms. Jones case was to begin to trial the paid defense Counsel opted out of the contract agreement and he requested that he must receive $5,000.00 in order to go to trial for Ms. Jones case. Since I was under the pressure of the statements which incriminated I to all the arrests of 3/28/2011 and allowed to proceed into evidence during all trials, and looking at the discussion with the Judge on August 5 2013 trial record of the plea acceptance, I was facing 15 years or more if I went to trial on the Ms. Jones case since I will be sentenced as a predicate upon being convicted of the trial case of Ms. Jones since I was just convicted of charges on 2 felonious cases (Ortiz/Quick). So to avoid the duties of an assigned attorney of ineffective counseling not like able as to the paid duties of the trial Counsel unfortunately whom is boasting to opt out of Counsel on the Ms. Jones case for the pretrial Counsel was an assigned Counsel whom added weight to the statements obtained as a result of the 3/28/2011 unwarranted search and seizure for him failing to research if there was any warrant in the arrest of such date which would had gave him the support, if research was done, to object to the pretrial Judge's erroneous ruling of trial indictment 2607/2011 stating that a warrant did exist in my 3/28/2011 arrest. Making the statements that harmed I upon trial suppressible in

* See CPLR 70.25

the interest of Justice. It was best for I to take a plea to avoid a predicate sentence of 25 years or more added to the 14 years Sentence in the Quick's case. Through the recent discoveries of due diligent research in pursuant to my post conviction appeals I found out that a predicate sentence is only permitted when the Commission of a crime began after a conviction of another crime.* So it is to state that the Judge was wrong since no crime began at the after of my convictions. Nevertheless there was the Coerciveness and breaching of Contract by trial Counsel to take the plea. In the interest of brevity I am moving on further. So it is to state that because the pretrial Counsel did not Know of the warrant absentee and I had doubts in the pretrial Judge's ruling that stated a warrant existed. I received with due diligence extended on the researching on the 3/28/11 arrest and warrant issue by alerting the assigned appellate Counsel Ms. Denise A. Cors, of the Appellate Advocates (Appellate Advocates did offer/assign an attorney in January 2015) about investigating if there is any warrant in the 3/28/2011 arrests. See Exhibit A attached. Upon the investigation in pursuant to the post conviction violation can only be raised since the exhaustion of the pretrial stage where also the 4th Amendment of The United States Constitution can be raised, has been made on pretrial of indictment 2607/2011, I also with due diligence found out that there is no warrant in my arrests of 3/28/2011 See Exhibit A of reports from the District Attorney's office of Kings County[4] and the New York Police Department Bureau.[5] So these reports were only founded because of the research of the in pursuant on the post Conviction appeal. And not known prior. The 14th Amendment of Due process of my United States Constitution has been violated since there was an arrest obtained on 3/28/2011 in my apartment without any warrant also the arrest was made on solely on the Robbery case of indictment 2589/2011 which had no probable cause to arrest I or anyone. There needed to be probable cause to arrest on the Robbery case. So in all my 14th Amendment of Due process right was violated, The 4th Amendment of the United States constitution was violated, The 8th Amendment of the United States Constitution was violated. And also in all there was the conduct of Malicious prosecution of The 4th Amendment of the United States Constitution. In all the grounds upon which relief must be granted on this petition of rehearing have been stated afore.

This petition of rehearing herein is brought in good faith since it is timely on the findings of the issues related to the malicious prosecution claim of the dismissal of the Robbery Case of indictment 2589/2011. The findings of the warrant issue are timely since it was aware to I Completely of the report of the New York police Department Bureau[5] that stated no warrant are found in the 3/28/2011 arrests. Such report was made aware to I April 14 2017 (along with the January 31st 2017 District Attorney's office of Kings County report[4] and The November 14 2017 Appellate Advocates[6] report which stated to complete the research of the warrant issue of the 3/28/2011 Unwarranted Search and seizure). It is to say that in accordance to the 3 year statute of limitation to file a law suit on statute 42 U.S.C. 1983 from the time of Knowing of a violation of the United States Constitution has been met, the warrant absentee's findings are related to the malicious prosecution claim and the other claims found on the Complaint brought.

I did meet all of the exhaustion of the state remedies in State court and I am not relieved yet. I can state that I also have filed (and received a Judgment) a 440.10

and a State Habeas Corpus motion but was denied of the relief on the 4th Amendment violation of the United States Constitution found in the 3/28/2011 arrests stated earlier in this writing which is also found in indictment 2607/2011 of the 3 cases I was convicted of. Indictment 2607/2011 was obtained as a result of the 4th Amendment violation of the United states Constitution that is a result of the unwarranted search and seizure (and there were no probable cause in the Robbery case that of Indictment 2589/2011 of why I was arrested from my apartment instantly on that day 3/28/2011); see earlier writing in here on more. The 440.10 motion's judgment[7] stated that I must bring the issues of grounds raised on direct appeal. I did bring it up to the appellate counsel but she refused to raise the issues[7s] on direct appeal. I, am also stating that the State Habeas Corpus Judgment[8] stated that I must bring it up on a 440 motion or direct appeal proceeding; I have exhausted all State Court remedies on my arrest issue of 3/28/2011 (although the State Habeas Corpus and 440 motions are on the convictions of what I am under currently of indictment 2607/2011). And the Eastern District of New York have denied the merits of the complaint on bringing that I am time barred of the 3 years statute of limitation, of 42 U.S.C. 1983, on filing a complaint. Also the Court of Appeals also denied my merits stating that I failed to raise legal and factual arguments on the appeal. The denials are improper however for I am meritorious. I was also denied in the Supreme Court of the united States of my merits on the complaint. I have in good faith, however, brought a meritorious complaint.

This petition for a rehearing in petition to request to grant I the merits on relief on the complaint of the issues afforded afore must be granted; for I am hurting, suffering and injured of The United states Constitution's violations found in the overall of this petition for a rehearing. I was in surgery during the incarceration of the Robbery case of indictment 2589/2011 in which I suffered a broken bone on the back of my right hand, during a slip and fall accident in the shower house at Rikers Island. In the interest of brevity that is only one of the injuries suffered among others. The violation of my United states Constitution of 3/28/2011 has been unduly in harm. It is overbearing (being away from my family and friends). Supportable material evidences are attached; see EXHIBIT A.

Therefore, please grant I the relief on the complaint found in Eastern District Docket 17-4297, Court of appeals Docket 18-562, and the Supreme Court of the United States Docket 18-7437. And all reliefs applicable to the upbringing of this petition for a rehearing.

1) See Schmidt's testimony of trial record of indictment 2607/2011 (trial transcript 655 - end of Schmidt's testimony) 2) See I the petitioner's trial testimony on trial transcript of indictment 2607/2011
3) See Exhibit A "A1" 4) See Exhibit A "A2" 5) See Exhibit A "A3"
6) See Exhibit A "A4" 7) See Exhibit A "A7" 7s) See Exhibit A "A6"
8) See Exhibit A "A8"

Attached is EXHIBIT A

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE OVERALL ARE TRUE AND CORRECT.

EXHIBIT A is following however the below are the content (Table of contents)

A1 Paper ordered by the Appellate Counsel of the DDS of the Robbery Court files of indictment 2589/2011 which states that I was not identified as the perpetrator of Robbery.

A2 Papers from the District Attorney's office of Kings County of there being no findings of any warrant found in the Robbery files dated 1/31/2017.

A3 Paper from the New York Police Department Bureau of there being no findings of any Warrant found in the 3/28/2011 arrest dated 4/14/2017.

A4 Paper from the Appellate Advocates (Appellate Counsel) of there being no findings of any warrant in my Cases of indictment 2607/2011

A6 Papers from the Appellate Advocates that denied to bring my warrant issue on direct appeal dated June 4th 2018.

A7 Papers from the Supreme Court of New York denying my 440.10 motion

A8 Papers from the supreme Court of New York Chemung County denying my State Hubeas Corpus motion.

COMPLAINT - FOLLOW UP INFORMATIONAL REPORT - INTERVIEW UNAPPROVED	Crime/Condition ROBBERY	Crime Code 73	Date of This Report 03/13/2011

Date of UF61	Date Case Assigned	Complaint No.	Case No.	Unit Reporting	Follow-Up No.
03/13/2011	03/13/2011	2011-073-02555	166	BRAM	2

Complainant's Name	Nickname/Alias/Middle Name	Address	Apt No.
DIAZ, JOSE		[redacted]	2
Sex	**Race**	**Date of Birth**	**Age**
MALE	WHITE HISPANIC	[redacted]	
Home Telephone	**Business Telephone**	**Cell Phone**	**Beeper #** / **E-Mail Address**
[redacted]		[redacted]	

Activity Address Location	Street	City	State	Zip	Apt #
OFFICE					
Cross Street	**Intersection of** and				**Premise Type**

Topic/Subject:
(INTERVIEW) JOSE DIAZ INTERVIEW

Summary of Investigation:
1. On March 13, 2011, at approximately 1100 hours Jose Diaz is present in the 73 precinct in regards to this incident. At this time I had the opportunity to speak with him & my interview is as follows: ~ ~- Mr. Diaz states he operates a cash only carpet cleaning business, whose customers are obtained through flyers he distributes & word of mouth. He states he received a phone call on Thursday, around 1:00 PM on his cell phone ([redacted]) from male who identified himself as Mike. He states this male wanted an estimate for three rooms & gave Mr. Diaz an address of 249 Boyland Street, apt 10D. Mr. Diaz set up an appointment for 4:00 PM later on that day & upon arriving at the location he spoke to a female at that apartment who stated she does not know Mike & she did not call for any estimate. Mr. Diaz states he then went back to his car & called the male on a different cell phone ([redacted]) because apparently his other cell phone stopped working. The male answered & stated Mr. Diaz had made a mi stake and should have gone to Apt 10B. Mr. Diaz states he then went back upstairs to the tenth floor & knocked on the door to 10B without any response. At this point Mr. Diaz went downstairs to the lobby where he states the male called him and told him he had made a mistake. Mr. Diaz states he asked the man if he was playing with him and the male stated apologetically that he had just moved into the building and he was not sure of his apartment. The male told Mr. Diaz that the correct apartment was Ap t 8B, so Mr. Diaz went upstairs a third time. He got off the elevator on the 8th floor and started walking to the end of the hallway where 8B was located. Just as he passed the stairwell entrance a male black, dressed in all black wearing a bandanna covering most of his face grabbed him from behind & pulled him into the stairwell. Mr. Diaz states the male had a knife pressed to his stomach & demanded Mr. Diaz give him his property. Mr. Diaz states he handed the male his wallet, which contained 800 dol lars USC and his (2) cell phones. The male then instructed Mr. Diaz to walk away up to the 9th floor, which he did & the male then walked down the stairs out of sight. Mr. Diaz states he stopped by the security desk & informed the guard working as to what just happened. Mr. Diaz told the security guard that he did not need the police & he left the building. I asked Mr. Diaz why he did not immediately call the police and he stated that he was afraid the male might try to harm him further. He states he already replaced the (2) cell phones and really had no intention of filing a report until I called him last night. Mr. Diaz then provided me with the phone number of the person he had been in contact with ([redacted]) ~ ~2. Mr. Diaz can only provide me with a very limited description of this male & he can not identify him. His description is as such: ~- male black, 6ft, unknown weight, wearing all black with a black mask covering his face. ~ ~3. For your information.

Reporting Officer:	Rank	Name	Tax Reg. No.	Command
	DT3	JASON CUTTLER	[redacted]	295
Reviewing Supervisor:	**Manner of Closing**	UNAPPROVED		

"A1"

(The victim reports the same thing as previously)

DISTRICT ATTORNEY
KINGS COUNTY
350 JAY STREET
BROOKLYN, NY 11201-2908
(718) 250-2000
WWW.BROOKLYNDA.ORG

Eric Gonzalez
Acting District Attorney

January 31, 2017

Damiola Animashaun
Inmate Number 14-A-0061
Southport Correctional Facility
P.O. Box 2000
Pine City, New York 14871-2000

Re: FOIL Request
People v. Animashaun
Kings County Ind. Nos. 2589/11 & 2607/11

Mr. Animashaun:

I am writing in response to your July 22, 2016 request for records pursuant to the Freedom of Information Law (FOIL), in which you sought "the copy of the warrant that resulted in my current incarceration". Please be advised that the files relating to your prosecution under Kings County Indictment No. 2589/11 have now been located. However, no record responsive to your request was located therein. In accordance with Public Officers Law § 89(3), this letter shall constitute certification attesting to the fact that these records could not be located after a careful and diligent search. See Rattley v. New York City Police Department, 96 N.Y.2d 873 (2001).

To the extent that the requested record may have been generated in conjunction with your prosecution under Kings County Indictment No. 2607/11, and contained within the file relating to that case, your request cannot be fulfilled at this time because, as you were previously advised by letter dated July 27, 2016, your unperfected direct appeal is still pending before the Appellate Division, Second Department. Disclosure of records while this litigation is pending would interfere with the handling of the judicial proceedings as well as with any further investigation that might be necessary. Accordingly, the requested records are exempt from disclosure pursuant to Public Officers Law § 87(2)(e)(i). See Whitley v. New York County District Attorney's Office, 101 A.D. 3d 455 (1st Dep't 2012); Moreno v. New York County District Attorney's Office, 38 A.D.3d 358 (1st Dep't 2007) (each holding that disclosure of the requested documents would have interfered with petitioner's then-pending criminal appeal and any subsequent proceedings in the underlying criminal case).

"A 2"

You may appeal these determinations within thirty days of the date of this letter by contacting Morgan Dennehy, Esq., FOIL Appeals Officer, at the above address.

Sincerely,

Douglas O'Connell
Paralegal Specialist
FOIL Records Access Officer

Sworn to before me this 31st day of January, 2017

Notary Public

ROBERT W. HO
Notary Public, State of New York
No. 01HO6026152
Qualified in New York County
Commission Expires June 07, 2019

POLICE DEPARTMENT
Office of Deputy Commissioner,
Legal Matters
One Police Plaza, Room 1406A
New York, New York 10038

April 14, 2017

Damilola Animashaun, DIN #14A0061
Southport Correctional Facility
P.O. Box 2000
Pine City, New York 14871

RE: FREEDOM OF INFORMATION LAW
REQUEST: LBF #17PL3085

Dear Mr. Animashaun:

This letter is in response to your letter dated April 4, 2017 appealing the determination of the Records Access Officer made on March 28, 2017 regarding records requested from the New York City Police Department. Your request, pursuant to the Freedom of Information Law, was originally received by the FOIL unit on March 6, 2017 and subsequently granted to the extent that various documents were disclosed.

The appeal is denied because the requested records (arrest warrant) are not records maintained by the NYPD nor are they in the custody of the NYPD. You may request a copy of the warrant from the court that issued the document.

Please note that other exemptions under FOIL may still apply.

You may seek judicial review of this determination by commencing an Article 78 proceeding within four months of the date of this decision.

Sincerely,

Jordan S. Mazur
Sergeant
Records Access Appeals Officer

c: Committee on Open Government

"A3"

PAGE 1

APPELLATE ADVOCATES

111 JOHN STREET - 9TH FLOOR, NEW YORK, NEW YORK 10038
PHONE: (212) 693-0085 FAX: (212) 693-0878

November 14, 2017

Attorney-Client Confidential Communication
Mr. Damilola Aminashaun
14-A-0061
Southport Correctional Facility
P.O. Box 2000
Pine City, NY 14871

Dear Mr. Aminashaun:

I am confirming that there is no "arrest warrant" for any case in my copy of the Supreme Court file for Kings County indictment number 2607/11.

Sincerely,

Denise A. Corsí
Appellate Counsel

14A4 11

APPELLATE ADVOCATES

111 JOHN STREET - 9TH FLOOR, NEW YORK, NEW YORK 10038
PHONE: (212) 693-0085 FAX: (212) 693-0878

June 4, 2018

Confidential Attorney-Client Correspondence

Mr. Damilola Animashaun
14-A-0061
309 Bare Hill Road
P.O. Box 2001
Malone, New York 12953

Dear Mr. Animashaun:

I plan to raise two issues in the brief on your direct appeal. The first issue is that you are entitled to a new trial because the court should have granted your attorney's motion to sever the counts concerning Ms. Ortiz from those concerning Ms. Quick. I will argue that this error deprived you of your right to due process because the jury could not fairly evaluate your defenses when presented with allegations of sexual assault by two complainants.

The second issue is that you are entitled to a new trial because the court should have permitted your attorney to present evidence that you were excluded as the source of the DNA on Ms. Quick's jeans. I will argue that this error deprived you of your right to present a defense. If the Appellate Division agrees, it might limit the new trial to the counts concerning Ms. Quick (for which you were sentenced to 14 years in total), leaving in place the conviction as to Ms. Ortiz (for which you have already served the one year sentence).

Before I can file your brief, I need to advise you of a risk in going forward with your appeal that depends on what we ask the Appellate Division to do with your guilty plea in the event we win

"A 6"

a new trial on either issue.

The Potential Risks of Winning the Direct Appeal

As you know, right after the court sentenced you to 14 years in prison on the Ortiz/Quick trial case, it sentenced you to 10 years in prison on the Jones plea case, and ran the plea sentence concurrent with the trial sentence. Thus, you are serving both sentences simultaneously for a total prison term of 14 years. Because you were sentenced in both cases on the same day, if you won a reversal on appeal in the trial case, you could have your plea vacated, but you have to have asked for this in the appellate brief. If you do not ask for your plea back in the brief, the 10-year sentence will remain in effect even you win a new trial.

As you read about the potential risks below, please keep in mind two things. First, you cannot be retried on counts that you have were acquitted of at the Ortiz/Quick trial. Also, I will refer to winning "a new trial" in the singular even though, if you win the severance issue, the Appellate Division would order two new trials — one as to Ortiz, and one as to Quick.

Winning a New Trial While Keeping the Plea in Place

If we do not ask for the plea back, there is less of an advantage to getting a new trial. That is because, even if you were acquitted at the new trial on all of the Ortiz/Quick charges, without getting the Jones plea vacated, you will still have to serve 10 years for the plea conviction.

If we do not ask for your plea back, and you are convicted again at a new trial on the Ortiz/Quick charges, it is possible — but unlikely — that a court would consider the plea conviction a new bad fact prompting it to run the new trial sentence consecutive to the plea sentence (one after the other), rather than running them concurrently (at the same time). I think it is unlikely that a court would do this because there is a very good argument that running them consecutively such that your new total sentence would be more than 14 years would be improper — a court cannot punish a defendant for winning a new trial on appeal.

Winning a New Trial While Getting Your Plea Back

If we ask for your Jones plea back, and win a new trial on the Ortiz/Quick charges, you will be in almost the same position you were in just after you were indicted. You would have pending charges as to Jones, Ortiz, and Quick, minus the charges you were already acquitted of. I cannot predict whether the prosecution would offer you a new plea deal to cover one or both cases, let alone a deal that is better than the total sentence you are currently serving.

A total acquittal after a trial of the Jones charges (the plea case), but a conviction after a new

trial of the Ortiz/Quick charges (the trial case) case poses no risk. You were already sentenced to the maximum prison term of 7 years for each count of second-degree rape as to Quick, which was run consecutively for a total of 14 years. Therefore, the most the court could impose if you were convicted again of the Ortiz/Quick charges is 14 years.

If you were acquitted in the Ortiz/Quick trial case, but convicted in a trial on the revived Jones charges, the Jones court could chose to sentence you very harshly. The sentence range for the most serious charges concerning Jones, first-degree rape and first-degree criminal sexual act, is a minimum of 5 years to as many as 25 years in prison. Also, depending on the evidence presented, it is possible the court would run the prison terms for these charges consecutively (one after the other).

The greatest risk you face is if, after a successful appeal, you are convicted a second time of the Ortiz/Quick charges and convicted of the revived Jones charges. The concern is that you would wind up with a total sentence that is far, far longer than the 14 years you are serving now. The sentencing judge could chose to not only impose the maximum penalty, but to run whatever sentence it does impose consecutive to your sentence under the first case (run each sentence one after the other) .

Finally, winning a new trial on the Ortiz/Quick counts and getting your plea back in the Jones matter also offers you a chance at the best outcome of all — a total acquittal on everything.

Your Decision

Unfortunately, I cannot predict the outcome of an appeal, but I wanted to inform you of the risks involved. Please fill-out, sign, and return the enclosed form to me by June 22, 2018, so that I know what remedy to ask for with respect to the Jones plea. I cannot file your brief until I have your decision, so the sooner I receive it the better. You can use the enclosed self-addressed stamped envelope so it gets here as quickly as possible.

Your Suggestions For Issues

Although I am impressed by the thought and effort you put into your suggestions for issues, unfortunately, I cannot use them for various reasons. Please do not interpret my decision as a personal judgment about you. As your advocate, it is my responsibility to give you my honest assessment of your case based upon the record and the law, even if my honest assessment is disappointing.

An appellate court would not agree that your identification procedure or statements should be suppressed because the police did not have the authority to arrest you. Even assuming that there was some defect with the robbery arrest warrant, it remains that the police had the right to detain you

in the precinct based on the positive photo identifications made several days earlier by Ms. Jones and Ms. Quick. Also, no appellate court would reverse the hearing court's ruling that your statements were voluntarily made and, thus, should not have been admitted at trial. Nevertheless, to the extent that your trial testimony allows me to argue that your pretrial statements were involuntary, I will do so when explaining how your defense was prejudiced by the court's erroneous rulings on severance and the DNA evidence.

Third-degree rape is an intentional crime, not a reckless crime. Therefore, I cannot argue that your conviction of attempted third-degree rape was legally impossible.

Your indictment indeed charged you with two counts of second-degree rape with respect to separate incidents concerning Ms. Quick. Therefore, the court was authorized to run them consecutively under P.L. § 70.25(2).

To the extent you are suggesting that I file a 440 motion raising an actual innocence claim, unfortunately, I do not have any information that would permit me to do so. Without more, assertions of innocence, no matter how sincere, are not enough for an actual innocence claim.

There was nothing jurisdictionally defective with your guilty plea concerning Ms. Jones. The law requires that the crime underlying a guilty plea must be one of the charges in the indictment or a lesser-included offense of a charge in the indictment. You pled guilty to first-degree rape under sub-section (1) of P.L. § 130.35 (forcible compulsion), which was a count on the indictment. In *People* v. *Castillo*, 8 N.Y.2d 959 (2007), the plea was invalid because Castillo pled guilty to a sub-section of first-degree robbery that was neither on the indictment nor a lesser-included offense of any charge on the indictment.

To the extent you have suggested that you were coerced by your lawyer into pleading guilty in the Jones matter, that is not something I can raise on your direct appeal. On the direct appeal, I may raise only issues that are based on facts in the record (the minutes, the exhibits, and the motions). The events you cited to support your suggestion, such as private discussions with your lawyer, were not recorded on the record. Related to this, the maximum sentence the court could have imposed for the top count of the charges concerning Ms. Ortiz, attempted first-degree rape, was 15 years. The maximum sentence for the top count of the charges concerning Ms. Quick, first-degree rape, was 25 years.

* * *

If you disagree with the issues I plan to raise, you may send a letter to the Appellate Division asking for permission to file a *pro se* supplemental brief. A *pro se* supplemental brief is submitted by the client without our assistance so that the Appellate Division may consider additional points not raised in the main brief. You must submit your request within 30 days of my cover letter with your copy of the main brief, and you must state at least one issue that you wish to raise (a sentence or two is enough). Please note, I am not suggesting that you file your own brief; I have no opinion on the

matter. I am simply advising you of your right to do so. If you are interested in filing a *pro se* brief, send you letter requesting permission to the following address.

Aprilanne Agostino
Clerk of the Court
Appellate Division, Second Department
45 Monroe Place
Brooklyn, NY 11201

Please return the risk form to me as soon as possible, and no later than June 22. Thank you.

Sincerely,

Denise A. Corsí
Appellate Counsel

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 39

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DAMILOLA ANIMASHAUN,

Defendant.

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DECISION AND ORDER

Hon. Sharen D. Hudson

Indictment No. 02607-2011

The Defendant, Damilola Animashaun, was convicted upon a jury verdict of violating Penal Law ("PL") § 130.30(1) – Rape in the Second Degree (two counts) and other related charges. The Defendant now moves to vacate the judgment of conviction pursuant to Criminal Procedure Law ("CPL") § 440.10(1). The People oppose the Defendant's motion. The Court has reviewed Defendant's motion papers, the People's opposition, the court file and all relevant statutes and case law and, for the reasons discussed hereafter denies Defendant's motion to vacate.

Procedural History

On March 28, 2011, the Defendant was charged under Kings County indictment number 02607-2011 with raping three different females, one of whom was fourteen years old. Defendant gave written and videotaped statements relating to his actions, including an admission that he had sex with the fourteen-year-old female. Under indictment number 02607-2011, the Defendant was charged with several counts of rape and endangering the welfare of a child.

"A7"

On September 4, 2012 and September 5, 2012, Justice Ozzi of Kings County Supreme Court conducted a combined *Dunaway, Huntley, Wade* hearing. After the hearing, the court found that the Defendant's arrest was based on probable cause and that evidence of the Defendant's identification and his statements were admissible. In June 2013 after a jury trial, the Defendant was convicted of PL § 130.30(1) – Rape in the Second Degree (two counts), PL § 260.10 – Endangering the Welfare of a Child (three counts), and PL §§ 110/130.25(2) – Attempted Rape in the Third Degree. On August 5, 2013, Defendant pleaded guilty to PL § 130.35(1) – Rape in the First Degree in connection to the charges involving the fourteen-year-old female.

On October 18, 2013, the Defendant was sentenced to ten years in prison for the Rape in the First Degree conviction, two consecutive terms of seven years in prison on his two convictions of Rape in the Second Degree, one year for his conviction of Attempted Rape in the Third Degree, and one year on each of the three counts of Endangering the Welfare of a Child. The two consecutive terms of seven years in prison were to run concurrent to the other sentences. The court imposed a ten-year term of post-release supervision. Pursuant to the judgment of conviction, Defendant is currently incarcerated. The Defendant now moves to vacate his judgment of conviction pursuant to CPL § 440.10(1).

Parties' Contentions

The Defendant argues that the judgment of conviction should be vacated under CPL § 440.10(1) because his Fourth Amendment rights were violated in that the arrest warrant was issued without probable cause and the police searched his apartment without his consent.

The People oppose the Defendant's motion arguing it is mandatorily procedurally barred pursuant to CPL § 440.10(2)(b). The People also contend the Defendant's motion fails to present a legal basis for relief under CPL § 440.10.

Analysis

CPL § 440

There is a presumption of regularity which attaches to judgments of conviction (Fisch, Evidence § 1133 [2d ed 1977]). In order to overcome that presumption and entitle a defendant to a hearing on a motion to vacate the judgment pursuant to CPL § 440.10, the defendant has the burden of coming forward with allegations sufficient to create an issue of fact as to matters not appearing on the record of the underlying conviction. *People v. Crippen*, 196 A.D.2d 548, 549 (2nd Dept. 1993) lv denied 82 N.Y.2d 848 (1993); see also *People v. Mims*, 94 A.D.3d 909 (2nd Dept. 2012) lv denied 19 N.Y.3d (2012); *People v. Cruz*, 14 N.Y.3d 814, 816 (2010).

Pursuant to CPL § 440.10(2)(b), the court must deny a motion to vacate a judgment when, at the time of the motion, the judgment is appealable or pending on appeal and sufficient facts appear on the record with respect to the ground or issue raised on the motion to allow adequate review on direct appeal. Therefore, where the record contains all of the facts upon which the resolution of the issues raised in a motion to vacate a judgment depend and no new evidence is presented from outside the record, collateral review by such a motion is unavailable and the motion must be summarily denied. *People v. Cooks*, 67 N.Y.2d 100 (1986); *People v. Avery*, 129 A.D.2d 852 (1987). *See also People v. Kindred,* 100 A.D.3d 1038 (2012) (A pro se motion to vacate a judgment of conviction was properly denied where the defendant presented no

PAGE 4

new evidence discovered since the entry of the judgment, his direct appeal was pending at time of the motion, and the record was sufficiently complete to permit appellate review of all the claims he raised).

In the instant case, Defendant argues that the judgment of conviction should be vacated because his Fourth Amendment rights were violated in that the arrest warrant was issued without probable cause and the police searched his apartment without his consent. However, Defendant currently has a direct appeal pending. Moreover, sufficient facts appear on the record with respect to the *Dunaway, Huntley, Wade* hearing held on September 4, 2012 and September 5, 2012, addressing probable cause for the arrest warrant. Here, the record contains sufficient facts to permit review of the lack of probable cause for the defendant's arrest, and thus the contention is not subject to collateral review by way of a motion to vacate, and can only be reviewed on direct appeal. *See People v. Angelakos,* 70 N.Y.2d 670 (1987); *People v. Cooks*, supra. Accordingly, pursuant to CPL § 440.10(2)(b), Defendant's motion to vacate his conviction under CPL § 440.10(1) is denied.

This opinion shall constitute the decision and order of the Court.

Dated: June 22, 2018
Brooklyn, New York

Hon. Sharen D. Hudson
A.J.S.C.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHEMUNG

In the Matter of the Application of
DAMILOLA ANIMASHAUN, DIN # 14-A-0061,

Petitioner,

For a Judgment Pursuant to Writ of Habeas Corpus

vs.

Southport Correctional Facility,

Respondents.

DECISION & ORDER

Index No. 2017-2416
RJI No. 2017-0732-M

RICH, J.

Petitioner claims to be illegally held in prison based upon violations of his constitutional rights in the underlying criminal case which is the basis for his commitment. He claims that his 4th Amendment rights were violated due to illegal search and seizure, that he was illegally arrested in his apartment, that involuntary statements were coerced from him, that identifications of him were illegal, that his plea was involuntary and that he was ineffectively represented by counsel.

The Attorney General has filed an answer to the petition.

Petitioner was convicted in Kings County Supreme Court upon his plea to Rape in the First Degree and he was found guilty of Attempted Rape in the Third Degree, Endangering the Welfare of a Child (3 counts), and Rape in the Second Degree (2 counts). He was sentenced on October 18, 2013 to a terms of imprisonment as follows:

- Attempted Rape 3rd, count 14,1 year;
- Endangering the Welfare of a Child, counts 17,25 & 34 - 1 year;
-Rape 2nd, counts 21 & 31 - 7 years determinate, 10 years PRS;
-Rape 1st, count 1, 10 years determinate, 10 years PRS;
- Counts 1, 14, 17, 25 & 34 to run concurrently to each other; and
- Counts 21 & 31 to run consecutively to each other.

"A 8"

The court has reviewed the commitment on file with DOCCS and the same appears valid on its face.

Even if the court accepted the Petitioner's argument, he would not be entitled to immediate release pursuant to a Habeas Corpus action, but would need to challenge the matter through a direct appeal or CPL 440 motion. People ex rel. Malinowski v Casscles, 53 AD2d 954 ((3rd Dept., 1976); People ex rel. Thomas v Dray, 197 AD2d 853 (4th Dept., 1993), app denied, 82 NY2d 663 (1993), rearg denied, 83 NY2d 847 (1994); People ex rel. Smith v Artus, 153 AD3d 1557 (4th Dept., 2017), app dismissed, 30 NY3d 1090. The instant petition must thus be and is hereby denied.

This constitutes the decision, opinion and order of the court.

Dated: April 6, 2018

RICHARD W. RICH, JR.
Acting Supreme Court Justice

Animashaun v. Schmidt et al., Docket No. 18 7437

Supreme Court of The U.S:
Docket No - 18 7437

Dear Court,

I have rectified the petition of rehearing. In which that you sent a date April 18 2019 letter for I to follow rule 44 thoroughly. The letter you sent is attached. It was received by I on the 23rd day of April 2019.

Yours,
Damilola Animashaun

4/25/19 Din 14A0061
Midstate Correction facility
P.O. Box 2500
Marcy, NY 13403

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE OVERALL ARE TRUE AND CORRECT.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

March 18, 2019

Mr. Damilola Animashaun
Prisoner ID #14A0061
Attica Correctional Facility
PO Box 149
Attica, NY 11401

Re: Damilola Animashaun
v. William Schmidt, et al.
No. 18-7437

Dear Mr. Animashaun:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk