

Appendix C
District of Columbia
Court of Appeals

No. 19-CO-723

ELMER W. GRANT, JR.,

Appellant,

v.

FEL3454-97

SEP 15 2020

UNITED STATES,

Appellee.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Thompson, Beckwith,
Easterly and Deahl, Associate Judges.

ORDER

On consideration of appellant's petition for rehearing *en banc*; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

ORDERED that appellant's petition for rehearing *en banc* is denied.

PER CURIAM

Copies to:

Honorable Ronna Lee Beck

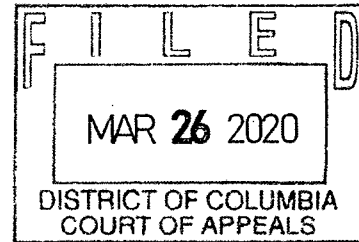
Director, Criminal Division

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District of Columbia
Court of Appeals



No. 19-CO-723

ELMER W. GRANT, JR.,
Appellant,

v.

1997 FEL 3454

UNITED STATES,
Appellee.

BEFORE: Glickman, Thompson, and Beckwith, Associate Judges.

J U D G M E N T

On consideration of appellee's motion for summary affirmance, appellant's lodged opposition, appellant's brief and limited appendix, and the record on appeal, it is

ORDERED, *sua sponte*, that the lodged opposition is hereby filed. It is

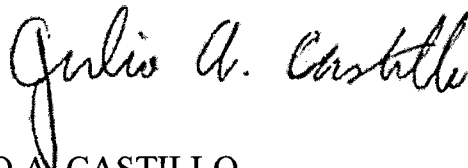
FURTHER ORDERED that appellee's motion for summary affirmance is granted. *See Watson v. United States*, 73 A.3d 130, 131 (D.C. 2013); *Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). Appellant cites no authority for the proposition that a defendant has the right to be present for the selection of grand jurors. *See generally In re Public Defender Service*, 831 A.2d 890, 904 (D.C. 2003) ("Grand jury proceedings have traditionally been kept secret[.]"); Super. Ct. Crim. R. 6(d)(1) ("The following persons may be present while the grand jury is in session: attorneys for the government, the witness being questioned, interpreters when needed, and a court reporter or an operator of a recording device."). Even assuming without deciding that some error inhered in the grand jury proceedings culminating in appellant's indictment, and that no procedural hurdles prevented him from raising such claims in his sixth collateral attack over twenty years after sentencing, as "[m]easured by the petit jury's verdict . . . any error in the grand jury proceeding connected with the charging decision was harmless beyond a reasonable doubt." *Williams v. United States*, 75 A.3d 217, 222 (D.C. 2013) (quoting *United States v. Mechanik*, 475 U.S. 66, 70 (1986)). Although *Williams* and *Mechanik* specifically concerned testimonial irregularities rather than an unqualified grand juror or a vote not taken in open court, we perceive no reason

No. 19-CO-723

why such errors are not equally harmless in light of the petit jury finding appellant guilty beyond a reasonable doubt. *See Williams*, 75 A.3d at 222 (“Effectively, the Supreme Court determined that the supervening jury verdict demonstrated *a fortiori* that probable cause existed.”) (citing *Mechanik*, 475 U.S. at 70). The trial court therefore did not abuse its discretion in summarily denying appellant’s motion. *See generally Meade v. United States*, 48 A.3d 761, 765 (D.C. 2012) (“Although a general presumption exists in favor of an evidentiary hearing in cases involving a collateral attack on a conviction, no hearing is required . . . where defendant’s motion consists of . . . allegations that would merit no relief even if true.”). It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:

A handwritten signature in black ink that reads "Julio A. Castillo". The signature is written in a cursive, flowing style.

JULIO A. CASTILLO
Clerk of the Court

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cml

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA)	CASE NO. 1997 FEL 003454
)	
v.)	
)	JUDGE RONNA LEE BECK
ELMER GRANT, JR.)	

ORDER DENYING MOTION

Before the court is Defendant's *pro se* "Motion to Challenge the Jurisdiction and, Motion to Vacate Judgment and Motion to Dismiss and, Motion to Reverse & Dismiss Indictment for Fed. R. Crim. P. 6 Violations & Lack of Jurisdiction and, Motion to Dismiss Pursuant to Rule 60(b)(6) and Rule 6(b)(2) and Code § 11-1910 and, Motion for Immediate Release."¹ Defendant claims his convictions must be vacated because he was not present during grand jury proceedings, rendering his indictment defective and stripping the court of jurisdiction over his case. Def. Mot. at 4-6.

Assuming purely *arguendo* there was some deficiency in Defendant's grand jury proceedings, a "petit jury's verdict render[s] harmless any conceivable error in the charging decision" or grand jury proceedings. See *United States v. Mechanik*, 475 U.S. 66, 73 (U.S. 1986). "In such a case, the societal costs of retrial after a jury verdict of guilty are far too substantial to justify setting aside the verdict simply because of an error in the earlier grand jury proceedings." *Id.* Here, on October 8, 1998, a petit jury found Defendant guilty of several counts, including first-degree felony murder while

¹ Judge Cushenberry, who previously presided over this matter, took Senior Status effective December 17, 2015. Per the Chief Judge's Administrative Order No. 18-19, the undersigned judge is paired with Judge Cushenberry, and is designated to hear all matters that would normally be heard by Judge Cushenberry.

armed. Defendant's claim is entirely without merit.² Accordingly, it is this **31st** day of **July, 2019**, hereby

ORDERED that Defendant's motion is **DENIED**.

Ronna Lee Beck

Judge Ronna Lee Beck
(Signed in Chambers)

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N.D. Appeal

Got

8-6-19

² In addition, Defendant's motion is procedurally barred. His failure to raise the instant claim in his first two D.C. Code § 23-110 motions precludes him from raising them now under the "abuse of the writ" doctrine. *Thomas v. United States*, 772 A.2d 818, 824 (D.C. 2001) (citing *McClesky v. Zant*, 499 U.S. 467, 490 (1991)).