

UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3<sup>rd</sup> day of March, two thousand twenty-two.

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Thurman Jerome Brown,

Plaintiff-Appellant,

v.

ORDER

Docket No: 21-1408

The People of The State of New York, The County of Nassau, The Nassau County Unified Court System, The Nassau County Police Department, The Nassau County Sheriff's Department,

Defendants-Appellees.

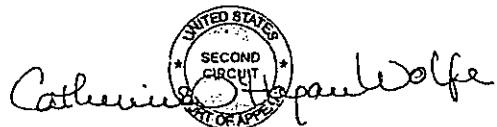
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Appellant, Thurman Jerome Brown, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

  
Catherine O'Hagan Wolfe



## Appendix B

21-1408-cv

Brown, The People of the State of New York

# MANDATE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

## SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit, held  
2 at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New  
3 York, on the 26<sup>th</sup> day of January, two thousand twenty-two.

4 PRESENT: PIERRE N. LEVAL,  
5 RAYMOND J. LOHIER, JR.,  
6 EUNICE C. LEE,  
7 *Circuit Judges.*

8  
9  
10 THURMAN JEROME BROWN,

11  
12 *Plaintiff-Appellant,*

13  
14 v.

No. 21-1408-cv

15  
16 THE PEOPLE OF THE STATE OF NEW YORK, THE  
17 COUNTY OF NASSAU, THE NASSAU COUNTY  
18 UNIFIED COURT SYSTEM, THE NASSAU COUNTY  
19 POLICE DEPARTMENT, THE NASSAU COUNTY  
20 SHERIFF'S DEPARTMENT,

21  
22 *Defendants-Appellees.*

1 FOR PLAINTIFF-APPELLANT:

Thurman Jerome Brown, pro se,  
New York, NY

2 FOR DEFENDANTS-APPELLEES

3 New York State and New York State  
4 Unified Court System:

5 Anisha S. Dasgupta, Deputy  
6 Solicitor General, *for* Letitia  
7 James, Attorney General, State of  
8 New York, New York, NY

9

10 FOR DEFENDANTS-APPELLEES

11 The County of Nassau, the Nassau County  
12 Police Department, and the Nassau County  
13 Sheriff's Department:

14 Robert F. Van der Waag, Deputy  
15 County Attorney, *for* John B.  
16 Chiara, Acting Nassau County  
17 Attorney, Mineola, NY

18

19 Appeal from an order of the United States District Court for the Eastern

20 District of New York (Gary R. Brown, *Judge*).

21 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,

22 AND DECREED that the order of the District Court is AFFIRMED.

23 Thurman Jerome Brown, proceeding pro se, appeals from a May 24, 2021

24 order of the District Court dismissing his suit under 42 U.S.C. § 1983 against

25 New York State, the County of Nassau, the "Nassau County Unified Court

26 System" (which we construe to be the New York State Unified Court System), the

1      Nassau County Police Department, and the Nassau County Sheriff's Department  
2      (together, "Defendants") in connection with his 1997 criminal conviction in New  
3      York for various theft offenses. On March 18, 2021, Defendants filed a letter  
4      asking the District Court to schedule a pre-motion conference, set a briefing  
5      schedule for a motion to dismiss, or issue an order dismissing the action in its  
6      entirety. The District Court construed the letter as a motion to dismiss and  
7      granted it. We assume the parties' familiarity with the underlying facts and the  
8      record of prior proceedings, to which we refer only as necessary to explain our  
9      decision to affirm.

10       "We review de novo a district court's dismissal of a complaint pursuant to  
11      Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations  
12      in the complaint as true, and drawing all reasonable inferences in the plaintiff's  
13      favor." Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002). A  
14      complaint must plead "enough facts to state a claim to relief that is plausible on  
15      its face." Green v. Dep't of Educ. of City of New York, 16 F.4th 1070, 1076–77 (2d  
16      Cir. 2021) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Where,

1 as here, we review pleadings and briefs submitted by pro se litigants, we  
2 "liberally construe" such submissions "to raise the strongest arguments they  
3 suggest." McLeod v. Jewish Guild for the Blind, 864 F.3d 154, 156 (2d Cir. 2017)  
4 (per curiam) (quotation marks omitted).

5 In dismissing Brown's suit, the District Court determined, among other  
6 things, that his claims were time-barred. We agree. "Although the statute of  
7 limitations is ordinarily an affirmative defense that must be raised in the answer,  
8 a statute of limitations defense may be decided on a Rule 12(b)(6) motion if the  
9 defense appears on the face of the complaint." Ellul v. Congregation of Christian  
10 Bros., 774 F.3d 791, 798 n.12 (2d Cir. 2014). That is the case here. In his  
11 complaint, Brown alleges that Defendants violated his civil and constitutional  
12 rights under 42 U.S.C. § 1983. In New York, such claims are subject to a statute  
13 of limitations of three years. See Okure v. Owens, 816 F.2d 45, 47 (2d Cir. 1987).<sup>1</sup>

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<sup>1</sup> Among other claims, Brown alleges that he was falsely imprisoned, but it is not clear whether he intends to bring this cause of action under § 1983, see, e.g., Shain v. Ellison, 273 F.3d 56, 67 (2d Cir. 2001), or under state tort law. For the purposes of this order, and construing Brown's complaint liberally, we assume he intended to allege false imprisonment under § 1983, which provides a three-year statute of limitations period rather than the one-year period under state tort law. See Okure, 816 F.2d at 48.

1 Section 1983 claims accrue "when the plaintiff knows or has reason to know of  
2 the injury which is the basis of his action." Pearl v. City of Long Beach, 296 F.3d  
3 76, 80 (2d Cir. 2002) (quotation marks omitted).

4 Brown's allegations concern the criminal investigation and trial that  
5 resulted in his 1997 conviction and a prison sentence that ended in 2009. He filed  
6 his complaint in this case more than a decade after his release from prison. Even  
7 assuming that Brown could anchor some claim to his receipt of his criminal  
8 history report in August 2010 — the most recent event we are able to discern  
9 from the complaint and its attachments — that date fell significantly more than  
10 three years before Brown commenced this suit.<sup>2</sup> Courts may toll a statute of  
11 limitations for § 1983 claims brought in New York where a plaintiff "was  
12 induced by fraud, misrepresentations or deception to refrain from filing a timely  
13 action," Zumpano v. Quinn, 6 N.Y.3d 666, 674 (2006) (quotation marks omitted),  
14 but that plainly did not happen here. To the contrary, Brown was able to bring

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<sup>2</sup>On appeal, Brown also alleges that he was wrongfully subjected to three years' parole following his incarceration, which would have ended in approximately 2012 — still significantly more than three years prior to the filing of his complaint.

1 several federal lawsuits with similar claims more than a decade before initiating  
2 this action. See Brown v. Rehnquist, No. 00 Civ. 7182, 2002 WL 32394848  
3 (E.D.N.Y. May 1, 2002), aff'd sub nom. Brown v. Wolstein, 71 F. App'x 96 (2d Cir.  
4 2003); Brown v. Legal Aid Soc'y of Nassau Cnty., No. 08 Civ. 198, 2008 WL  
5 11411651 (E.D.N.Y. June 3, 2008), aff'd, 367 F. App'x 215 (2d Cir. 2010).

6 We therefore conclude that the District Court did not err when it  
7 dismissed Brown's claims as untimely. In addition, to the extent that Brown  
8 asked the District Court to have his 1997 state conviction vacated, the Rooker-  
9 Feldman doctrine barred that claim. That doctrine, which prevents district  
10 courts from "review[ing] the judgments of state courts," Teichmann v. New  
11 York, 769 F.3d 821, 826 (2d Cir. 2014), applies where the federal-court plaintiff (1)  
12 lost in state court, (2) complains of injuries caused by the state court judgment,  
13 (3) invites the federal court to review and reject that judgment, and (4) brings the  
14 federal action after the state court renders its judgment, Vossbrinck v. Accredited  
15 Home Lenders, Inc., 773 F.3d 423, 426 (2d Cir. 2014). Since all four requirements

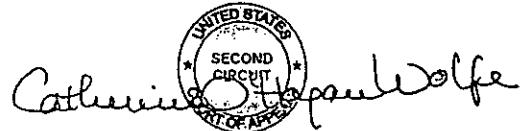
1 were clearly satisfied here, Rooker-Feldman barred Brown's claim seeking to  
2 invalidate his 1997 state conviction.

3 On appeal, Brown also maintains that the District Court abused its  
4 discretion when it construed Defendants' pre-motion letter as a motion to  
5 dismiss. We conclude that the District Court acted within its discretion in doing  
6 so, especially since Defendants clearly laid out their grounds for dismissal.

7 Brown further suggests that the District Court unlawfully withheld a report and  
8 recommendation from the Magistrate Judge, but that argument finds no support  
9 in the record, which shows that the District Court dismissed the case before any  
10 report was filed.

11 We have considered Brown's remaining arguments and conclude that they  
12 are without merit. For the foregoing reasons, the order of the District Court is  
13 AFFIRMED.

14 FOR THE COURT:  
15 Catherine O'Hagan Wolfe, Clerk of Court  
16

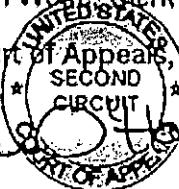
  
Catherine O'Hagan Wolfe

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A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit



  
Catherine O'Hagan Wolfe

## Appendix C

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
THURMAN JEROME BROWN,

Plaintiff,

- against -

JUDGMENT  
CV 20-20 (GRB)(AKT)

PEOPLE OF THE STATE OF NEW YORK, THE  
COUNTY OF NASSAU, THE NASSAU COUNTY  
UNIFIED COURT SYSTEM, THE NASSAU  
COUNTY POLICE DEPARTMENT, THE NASSAU  
COUNTY SHERIFF'S DEPARTMENT,

Defendants.

-----X

An electronic Order of Honorable Gary R. Brown, United States District Judge, having been filed on May 24, 2021, granting defendants' motion to dismiss, dismissing this matter, denying *in forma pauperis* status for the purpose of any appeal, and directing the Clerk of the Court to close this case, it is

**ORDERED AND ADJUDGED** that plaintiff Thurman Jerome Brown take nothing of defendants People of the State of New York, County of Nassau, Nassau County Unified Court System, Nassau County Police Department, and Nassau County Sheriff's Department; that the defendants' motion to dismiss is granted; the this matter is dismissed; that *in forma pauperis* status for the purpose of any appeal is denied; and that this case is closed.

Dated: May 25, 2021  
Central Islip, New York

DOUGLAS C. PALMER  
CLERK OF THE COURT  
BY: /S/ JAMES J. TORITTO  
DEPUTY CLERK

## Appendix D

Nassau County



Police Department

THOMAS R. SUOZZI  
COUNTY EXECUTIVE

1490 Franklin Avenue  
Mineola, New York 11501  
(516) 573-7000

WILLIAM J. WILLETT  
COMMISSIONER OF POLICE

July 12, 2002

Mr. Thurman Brown  
Din # 98A2656  
Green Haven Correctional Facility  
P. O. Box 4000  
Stormville, New York 12582

Re: Freedom of Information Request  
Our File # LB 677-2002

Dear Mr. Brown:

Receipt of your recent correspondence is hereby acknowledged. Enclosed, please find a copy of the sealing order. You should contact Nassau County First District Court, 99 Main Street, Hempstead, N.Y., 11550 for information regarding the Judge's name and the sealing order number. We are not in possession of that information.

Very truly yours,

Sheila Wimberly  
Police Officer  
Legal Bureau

SW/  
Enclosure

SEALED 160.50

BROWN, THURMAN, J. NY 117 N 4786379R CL # 20743469H  
 DISPOSITION DATE 10/07/1996 ARREST DATE 3/19/1996 ARREST # 1-2416-96  
 DATE OF BIRTH 4/15/1959 STREET # 711 STOWE AVE  
 GENDER FEMALE CITY OF BALDWIN, NY 11518 168162  
 ATTORNEY J. BROWN THURMAN 711 STOWE AVE  
 BALDWIN, NY 11518

DOCKET # 29226/96 \*SEALED 160.50\* JUDGE: ORT, V 10/07/1996  
 NASSAU FIRST DISTRICT COURT  
 1. 140.23 SCT  
 2. 160.95 SCT

DOCKET # 29227/96 \*SEALED 160.50\* JUDGE: ORT, V 10/07/1996  
 NASSAU FIRST DISTRICT COURT  
 3. 140.23 SCT

DOCKET # 29223/96 \*SEALED 160.50\* JUDGE: ORT, V 10/07/1996  
 NASSAU FIRST DISTRICT COURT  
 4. 160.95 SCT

DOCKET # 29224/96 \*SEALED 160.50\* JUDGE: DERIGGI, S 11/04/1996  
 NASSAU FIRST DISTRICT COURT  
 5. 110-160.95 SCT

DOCKET # 29225/96 \*SEALED 160.50\* JUDGE: ORT, V 10/07/1996  
 NASSAU FIRST DISTRICT COURT  
 6. 160.95 SCT

INDICTMENT 96469-96 JUSTICE: ORT, V NASSAU COUNTY COURT  
 1. 140.23 TFG  
 2. 160.95 TFG  
 4. 160.95 ACG  
 5. 155.60 TFG  
 6. 155.30 (2) ACG  
 7. 155.25 TFG  
 8. 155.35 (2) TFG  
 10. 160.50 CR#3 TFG

DD # 1-47812-96 RVC # 1507496 DD # 1-44440-96  
 DD # 1-4727-96 RVC # 1287-96 CR# 1-1936-96  
 DD # 1-4399-96 RVC # 1209-96 ARR # 1-2416-96  
 DD # 1-4996-96 RVC # 1351-96

INDICTMENT NO. 4-65-CR-1074, CAT, 4

NASSAU COUNTY COURT

S. 118-160.67

DISM.

NO FINDING BY THE GRAND JURY 3. 140,23  
5. 160,10

NOT ARRAIGNED 7. 160,13  
12. 160,10

## Appendix E



**New York State Division of Criminal Justice Services  
4 Tower Place  
Albany, New York 12203-3702**

**Date:** August 17, 2010  
**To:** THURMAN J BROWN  
9260 HOLLAND AVE 2B  
ROCKAWAY BEACH, NY 11693  
**From:** Division of Criminal Justice Services  
Identification & Special Services Group  
Record Review and Challenge Unit  
**Subject:** RECORD REVIEW RESULTS

---

A search of the Division of Criminal Justice Services' (DCJS) files, using the fingerprint impressions submitted with your record review request, has resulted in an identification to a New York State case/criminal history report under NYSID number 4728379R. A copy of the full report is enclosed. This report includes all non-criminal and/or criminal history information maintained on file by DCJS that pertains to you.

A second search of sealed records, based solely on the personal descriptive data you provided, has also been performed. If that search resulted in a possible identification, the resulting sealed criminal history information has been appended to the fingerprint-based search result. Note that the sealed information, if included, is provided to you in accordance with subsection 2 of Criminal Procedure Law 160.50 and is only based on a search of the personal descriptive information you provided. This sealed information is not to be regarded as a positive identification because it is not the result of a fingerprint search. DCJS disseminates sealed information only where authorized by law to do so.

If you wish to challenge the accuracy or completeness of any information contained in your New York State case/criminal history report, please refer to the enclosed **Help Us Help You** document and complete the enclosed Statement of Challenge form. If you choose to challenge, please return the challenge form, and any supporting documentation to the attention of the Record Review and Challenge Unit at the above address. Please note that DCJS cannot modify any data without written authorization from the reporting agency.

If your report is modified as a result of a successful challenge, a new copy of your New York State case/criminal history report will be mailed to you. If you have any questions, please write the Record Review and Challenge Unit at the above address, or telephone (518) 485-7675.

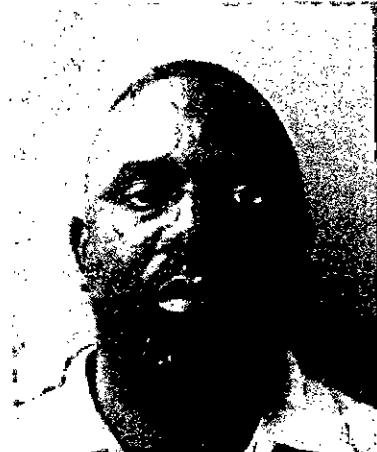
## Fingerprint Response

ORI: NYDCJSPRY  
NYS Div of Criminal Justice Services - Public Record Review  
NYSID : 4728379R

Identification   Summary   Criminal History   Job/License   Wanted   Missing   NCIC/III

---

### ● Transaction Data



Name: THURMAN J BROWN  
Transaction ID: 12839885  
Agency ORI: NYDCJSPRY  
Type of Submission: CIVILINQUIRY

#### Civil Information

Type of Application: Record Review  
Name: THURMAN J BROWN  
Address: 9260 HOLLAND AVE 2B, ROCKAWAY BEACH, NY 11693  
Ethnicity: Not Hispanic  
Country of Citizenship: USA  
US Citizen :  
Date of Birth: April 16, 1965  
Date of Application: August 16, 2010  
Application Agency: NYS Div of Criminal Justice Services - Public Record Review  
Application Number:

### ● Transaction Status Information

Activity	Date/Time	Elapsed
Initial Transaction Received	August 17, 2010 08:04:24 am	
Initial Transaction Received	August 17, 2010 08:04:24 am	
Transaction Completed	August 17, 2010 08:11:20 am	0 hours 7 mins
Rapsheet Produced	August 17, 2010 08:11:33 am	

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### NYS DCJS Repository Response

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### ● Attention - Important Information

Fingerprint response on 08/17/2010 08:11 am for transaction 12839885

\* See Additional Information at the bottom of this response for more banners pertaining to the criminal history

**DNA PROFILE IS ON FILE IN THE DNA DATABANK** If more information is required call DCJS Office of Forensic Services at 1-800-262-3257

**Currently under Parole Supervision by Queens I**

**Violent Felony offense(s) on file**

**History Consolidation** - Previously identified under the following NYSID number(s). Please change your records to reflect the consolidation of this number(s) to the current NYSID number 4728379R.

Consolidated from NYSID	Consolidated to NYSID	Consolidation Date
2809859Q	4728379R	May 27, 1981

## ● Identification Information



Name:

THURMAN JEROME BROWN JR    THURMAN J BROWN  
THURMOND BROWN

Date of Birth:

Apr 16, 1965    Apr 16, 1965

Place of Birth:

New York    New York

Address:

25 02 MOTT AVE, QUEENS, NY  
15-20 BCH 12TH ST, FAR ROCKAWAY, NY  
1506 BEACH 12TH ST. FAR ROCKAWAY, NY  
25-02 MOTT AV , ROCKAWAY, NY  
9260 HOLLAND AVE 2B, ROCKAWAY BEACH, NY 11693  
25-02 MOTT AVE, FAR ROCKAWAY, NY  
4 24 GATEWAY AVE, QUEENS, NY  
2502 MOTT AVE, FAR ROCKAWAY, NY  
2502 MOTT AVE, QUEENS, NY  
711 STOWE AVE, BALDWIN, NY  
84 BAYVIEW AVE, INWOOD, NY

Sex:    Race:    Ethnicity: SkinTone:  
Male    Black    Not    Dark/Medium

Hispanic

Eye Color: Hair Color: Height: Weight:  
Brown    Brown    6' 01"    250

SSN:

244-19-0446 244-19-4660

NYSID#: FBI#: Probation Client ID#: NCIC Classification:  
04728379R 838142EA0 284108 PIPPIP14PIPOPOPI17  
III status: Criminal record in other states or in multiple FBI files for NYS

US Citizen:

## ● Summary Information ▲

Name: THURMAN JEROME BROWN JR Total Arrests: 8  
Date of Earliest Arrest: January 13, 1981 Date of Last Arrest: September 19, 1996

Total Arrests Charges:	18
Felony:	14
Violent Felony:	5
Firearm:	0
Misdemeanor:	4
Other:	0

Total Convictions:	11
Felony:	10
Violent Felony:	2
Firearm:	0
Misdemeanor:	1
Other:	0
YO Adjudication(s):	2

Warrant Information:	
Failure to Appear Counts:	2
Open Warrants:	0

Revocation Counts:	
Probation:	0
Parole:	1

Miscellaneous:	
Escape Charges:	0
Sex Offender Convictions:	0

## ● NYS Criminal History Information ▲

↓ Cycle 8 ↑

### Violent Felony Offense

#### Arrest/Charge Information

Arrest Date: September 19, 1996 12:30 pm (12:30:00)

Name: THURMAN JEROME BROWN JR  
Date of Birth: April 16, 1965  
Sex: Male  
Race: Black  
SSN: 244-19-4660  
Age at time of crime/arrest: 31  
Address: 711 STOWE AVE, BALDWIN, NY  
Place of Arrest: City of New York, NY  
Arrest Type: Crime In Progress  
Date of Crime: August 19, 1996  
Place of Crime: Village of Rockville Ctr, Nassau County , NY  
Criminal Justice  
Tracking No.: 20743469H  
Arresting Agency: Nassau County Police Department- Communication Bureau  
Arresting Officer ID: 6438

Arrest Number: 168162

Arrest Charges:

- Robbery-2nd Degree  
PL 160.10 Class C Felony Degree 2 NCIC 1299
- Burglary 2nd Degree: Illegal Entry- Dwelling  
PL 140.25 Sub 02 Counts: 2 Class C Felony Degree 2 NCIC 2206
- Robbery-3rd Degree  
PL 160.05 Counts: 2 Class D Felony Degree 3 NCIC 1299
- Attempted Robbery-3rd Degree  
PL 160.05 Class E Felony Degree 3 NCIC 1299

#### Court Case Information

-- Court: Nassau County 1st District Court Case Number: 29226/96

September 20, 1996

#### Arraigned

- Burglary 2nd Degree: Illegal Entry- Dwelling  
PL 140.25 Sub 02 Class C Felony NCIC 2206
- Robbery-3rd Degree  
PL 160.05 Class D Felony NCIC 1299

September 20, 1996

#### Initial Report Of Docket Number

October 07, 1996

#### Transferred To Superior Court

- Burglary 2nd Degree: Illegal Entry- Dwelling  
PL 140.25 Sub 02 Class C Felony NCIC 2206
- Robbery-3rd Degree  
PL 160.05 Class D Felony NCIC 1299

September 05, 2001

#### Sealed Upon Termination Of Criminal Action In Favor Of The Accused CPL160.50

-- Court: Nassau County 1st District Court Case Number: 29222/96

September 20, 1996

#### Initial Report Of Docket Number

September 20, 1996

#### Arraigned

- Burglary 2nd Degree: Illegal Entry- Dwelling  
PL 140.25 Sub 02 Class C Felony NCIC 2299

October 07, 1996

**Transferred To Superior Court**

-- Burglary 2nd Degree: Illegal Entry- Dwelling  
PL 140.25 Sub 02 Class C Felony NCIC 2299

September 05, 2001

**Sealed Upon Termination Of Criminal Action In Favor Of The Accused CPL160.50**

-- Court: Nassau County 1st District Court Case Number: 29223/96

September 20, 1996

**Initial Report Of Docket Number**

September 20, 1996

**Arraigned**

-- Robbery-3rd Degree  
PL 160.05 Class D Felony NCIC 1299

October 07, 1996

**Transferred To Superior Court**

-- Robbery-3rd Degree  
PL 160.05 Class D Felony NCIC 1299

September 05, 2001

**Sealed Upon Termination Of Criminal Action In Favor Of The Accused CPL160.50**

-- Court: Nassau County 1st District Court Case Number: 29224/96

September 20, 1996

**Arraigned**

-- Attempted Robbery-3rd Degree  
PL 160.05 Class E Felony NCIC 1299

September 20, 1996

**Initial Report Of Docket Number**

October 07, 1996

**Transferred To Superior Court**

-- Attempted Robbery-3rd Degree  
PL 160.05 Class E Felony NCIC 1299

September 05, 2001

**Sealed Upon Termination Of Criminal Action In Favor Of The Accused CPL160.50**

-- Court: Nassau County 1st District Court Case Number: 29225/96

September 20, 1996

**Initial Report Of Docket Number**

September 20, 1996

**Arraigned**

-- Robbery-2nd:Physical Injury Display Firearm  
PL 160.10 Sub 02 Class C Felony NCIC 1299

October 07, 1996

**Transferred To Superior Court**

-- Robbery-2nd:Physical Injury Display Firearm  
PL 160.10 Sub 02 Class C Felony NCIC 1299

September 05, 2001

**Sealed Upon Termination Of Criminal Action In Favor Of The Accused CPL160.50**

-- Court: Nassau County Court Case Number: 96469-96

October 15, 1996

**Initial Report Of Indictment Number**

-- Burglary 2nd Degree: Illegal Entry- Dwelling PL 140.25 Sub 02	Class C	Felony	NCIC 2299	
-- Robbery-3rd Degree PL 160.05	Counts: 3	Class D	Felony	NCIC 1299
-- Burglary-3rd Degree: Illegal Entry with Intent to Commit a Crime PL 140.20	Class D	Felony	NCIC 2299	
-- Grand Larceny-3rd:Property Value Exceeds \$3000 PL 155.35	Counts: 2	Class D	Felony	NCIC 2399
-- Criminal Possession Stolen Property-3rd Value > \$3,000 PL 165.50	Counts: 2	Class D	Felony	NCIC 2804
-- Grand Larceny-4th Degree PL 155.30	Counts: 2	Class E	Felony	NCIC 2399
-- Criminal Possession Stolen Property-5th Degree PL 165.40	Class A	Misdemeanor	NCIC 2804	

December 01, 1997

**Convicted Upon Verdict After Jury Trial**

-- Burglary 2nd Degree: Illegal Entry- Dwelling  
PL 140.25 Sub 02 Class C Felony NCIC 2299

Fingerprint response on 08/17/2010 08:11 am for transaction 12839885

**Sentenced to:** Term: 15 Year(s) Sentence Date: December 01, 1997

-- Robbery-3rd Degree  
PL 160.05 Class D Felony NCIC 1299

**Sentenced to:** Term: 42 Month(s) to 7 Year(s) Indeterminate Sentence Date: December 01, 1997

-- Grand Larceny-3rd:Property Value Exceeds \$3000  
PL 155.35 Counts: 2 Class D Felony NCIC 2399

**Sentenced to:** Restitution Amount: Unspecified Sentence Date: December 01, 1997  
Term: 42 Month(s) to 7 Year(s) Indeterminate

-- Criminal Possession Stolen Property-3rd Value > \$3,000  
PL 165.50 Counts: 2 Class D Felony NCIC 2804

**Sentenced to:** Term: 42 Month(s) to 7 Year(s) Indeterminate Sentence Date: December 01, 1997

-- Grand Larceny-4th Degree  
PL 155.30 Class E Felony NCIC 2399

**Sentenced to:** Term: 2 Year(s) to 4 Year(s) Indeterminate Sentence Date: December 01, 1997

-- Criminal Possession Stolen Property-5th Degree  
PL 165.40 Class A Misdemeanor NCIC 2804

**Sentenced to:** Term: 1 Year(s) Sentence Date: December 01, 1997

December 01, 1997

**Acquitted By Jury**

-- Robbery-3rd Degree  
PL 160.05 Counts: 2 Class D Felony NCIC 1299  
-- Burglary-3rd Degree: Illegal Entry with Intent to Commit a Crime  
PL 140.20 Class D Felony NCIC 2299  
-- Grand Larceny-4th Degree  
PL 155.30 Class E Felony NCIC 2399

December 01, 1997

**Not Arraigned**

-- Robbery-2nd Degree  
PL 160.10 Class C Felony NCIC 1299

-- Court: Nassau County Court Case Number: 96746-96

November 13, 1996

**Initial Report Of Indictment Number**

-- Attempted Robbery-3rd Degree  
PL 160.05 Class E Felony NCIC 1299

December 10, 1997

**Dismissed**

-- Attempted Robbery-3rd Degree  
PL 160.05 Class E Felony NCIC 1299

April 07, 2008

**Sealed Upon Termination Of Criminal Action In Favor Of The Accused CPL160.50**

**Interim release Status:** Remanded without bail

#### **Incarceration/Supervision Information**

##### **Incarceration Admission Information**

Admission Date: May 15, 1998  
Admission Reason: Parole Violator - New Term  
Agency: NYS DOCS Downstate Correctional Facility  
State Inmate ID No.: 98A2656  
Sentence to: Term: 238 Month(s) to 22 Year(s)  
Max Expiration Date: September 16, 2018  
Conditional Release Date: July 24, 2016  
Inmate Name: THURMAN JEROME BROWN JR  
Admission Charges:  
-- Burglary-2nd Degree  
PL 140.25 Class C Felony Degree 2 NCIC 2299

##### **Incarceration Release Information**

Release Date: July 24, 2009  
Release Reason: Paroled to Division of Parole  
Agency: NYS DOCS Downstate Correctional Facility  
Inmate ID Number: 98A2656

##### **Parole Release Information**

Received by Parole on: July 24, 2009  
Release Type: Initial Release to Parole  
Max Expiration Date: May 25, 2022  
Supervision Office: Queens I  
Parole ID Number: 98A2656  
Name: THURMAN JEROME BROWN JR

---

↓ Cycle 7 ↑

#### **Arrest/Charge Information**

Arrest Date: July 21, 1992 12:58 pm (12:58:00)

Fingerprint response on 08/17/2010 08:11 am for transaction 12839885

Name: THURMAN JEROME BROWN JR  
Date of Birth: April 16, 1965  
Sex: Male  
Race: Black  
SSN: 244-19-4660  
Age at time of crime/arrest: 27  
Address: 84 BAYVIEW AVE, INWOOD, NY  
Fax Number: NA10269  
Place of Arrest: Town of Hempstead, Nassau County , NY  
Arrest Type: Crime In Progress  
Date of Crime: July 21, 1992  
Place of Crime: Town of Hempstead, Nassau County , NY  
Criminal Justice  
Tracking No.: 11097029L  
Arresting Agency: Nassau County Police Department- Communication Bureau  
Arresting Officer ID: 7115  
Arrest Number: 168162  
Arrest Charges:  
-- Robbery-3rd Degree  
PL 160.05 Class D Felony Degree 3 NCIC 1299

#### Court Case Information

-- Court: Nassau County 1st District Court Case Number: 15036/92  
July 22, 1992  
**Arraigned**  
-- Robbery-3rd Degree  
PL 160.05 Class D Felony NCIC 1299

July 22, 1992

#### Initial Report Of Docket Number

October 05, 1992

#### Transferred To Superior Court

-- Robbery-3rd Degree  
PL 160.05 Class D Felony NCIC 1299

-- Court: Nassau County Court Case Number: 82997-92

October 05, 1992

#### Initial Report Of Indictment Number

October 09, 1992

#### Returned On Warrant

Fingerprint response on 08/17/2010 08:11 am for transaction 12839885

April 26, 1993

**Convicted Upon Plea Of Guilty**

-- Grand Larceny-4th Degree  
PL 155.30 Class E Felony NCIC 2399

**In Full Satisfaction of:**

-- Robbery-3rd Degree  
PL 160.05 Class D Felony NCIC 1299  
  
-- Tamper With Physical Evidence  
PL 215.40 Class E Felony NCIC 4804

**Sentenced to:** Term: 18 Month(s) to 3 Year(s) Sentence Date: April 26, 1993

**Interim release Status:** Released on own recognizance (ROR)

---

**↓ Cycle 6 ↑**

**Violent Felony Offense**

**Arrest/Charge Information**

Arrest Date: May 06, 1987 06:05 pm (18:05:00)

Name:	THURMAN JEROME BROWN JR
Date of Birth:	April 16, 1965
Sex:	Male
Race:	Black
Age at time of crime/arrest:	22
Address:	2502 MOTT AVE, FAR ROCKAWAY, NY
Fax Number	NA5854
Place of Arrest:	Town of Hempstead, Nassau County, NY
Arrest Type:	Unknown
Date of Crime:	May 06, 1987
Place of Crime:	Village of Lawrence, Nassau County, NY
Criminal Justice	
Tracking No.:	11107100L
Arresting Agency:	Nassau County Police Department- Communication Bureau
Arresting Officer ID:	1573
Arrest Number:	168162
Arrest Charges:	
-- Robbery-1st Degree	
	PL 160.15 Class B Felony Degree 1 NCIC 1299

**Court Case Information**

-- Court: Nassau County Court Case Number: 6209-87(N)

July 23, 1987

**Bench Warrant Issued**

July 28, 1987

**Bench Warrant Vacated**

February 29, 1988

**Convicted Upon Verdict After Trial**

-- Robbery-1st Degree

PL 160.15 Class B Felony NCIC 1299

**Sentenced to:** Term: 6 Year(s) to 12 Year(s) Sentence Date: February 29, 1988

-- Court: Nassau County Court Case Number: 66209-87

February 25, 1993

**Returned On Warrant**

May 19, 1993

**Sentence Continued**

-- Court: Nassau County 1st District Court Case Number: F02262/87

**Initial Report Of Docket Number**

**Interim release Status:** Posted Bail

**Incarceration/Supervision Information**

**Incarceration Admission Information**

Admission Date: March 11, 1988

Admission Reason: New Commitment

Agency: NYS DOCS Downstate Correctional Facility

State Inmate ID No.: 88A2237

Sentence to: Term: 6 Year(s) to 12 Year(s)

Max Expiration Date: April 30, 1999

Conditional Release Date: April 30, 1995

Inmate Name: THURMAN JEROME BROWN JR

**Incarceration Release Information**

Release Date: July 21, 1992

Release Reason: Temporary Release AWOL (Absent Without Leave)

Agency: NYS DOCS Downstate Correctional Facility

Inmate ID Number: 88A2237

### **Incarceration Admission Information**

Admission Date: August 24, 1992  
Admission Reason: Return from Temporary Release AWOL - No New Term  
Agency: NYS DOCS Ulster Correctional Facility  
State Inmate ID No.: 88A2237  
Sentence to: Term: 6 Year(s) to 12 Year(s)  
Max Expiration Date: April 30, 1999  
Conditional Release Date: April 30, 1995  
Inmate Name: THURMAN JEROME BROWN JR  
Admission Charges:  
- Robbery-1st Degree  
PL 160.15 Class B Felony Degree 1 NCIC 1299

### **Incarceration Release Information**

Release Date: February 22, 1996  
Release Reason: Paroled to Division of Parole  
Agency: NYS DOCS Ulster Correctional Facility  
Inmate ID Number: 88A2237

### **Parole Release Information**

Received by Parole on: February 22, 1996  
Release Type: Initial Release to Parole  
Max Expiration Date: June 03, 2002  
Supervision Office: Nassau  
Parole ID Number: 88A2237  
Name: THURMAN JEROME BROWN JR

### **Parole Discharge Information**

Discharged from Parole on: May 15, 1998  
Discharge Type: Revoked-PV (Parole Violation)  
Parole ID Number: 88A2237

---

↓ Cycle 5 ↑

### **Arrest/Charge Information**

Arrest Date: March 04, 1987 07:20 pm (19:20:00)

Name: THURMAN JEROME BROWN JR  
Date of Birth: April 16, 1965  
Sex: Male  
Race: Black  
SSN: 244-19-0446  
Age at time of crime/arrest: 21  
Address: 424 GATEWAY AVE, QUEENS, NY  
Fax Number: Q5642  
Place of Arrest: Queens County, NY

Date of Crime: March 04, 1987  
Place of Crime: Queens County, NY  
Criminal Justice  
    Tracking No.: 09788864R  
Arresting Agency: NYPD PCT 101  
Arresting Officer ID: 880299  
Arrest Case Number: 17750940  
Arrest Number: Q87007354  
Arrest Charges:  
    -- Criminal Possession Contr Sub-3rd:Narc Drug Intent To Sell  
        PL 220.16 Sub 01      Class B      Felony Degree 3      NCIC 3599  
    -- Criminal Sale Controlled Substance-3rd:Narcotic Drug  
        PL 220.39 Sub 01      Class B      Felony Degree 3      NCIC 3599

#### Court Case Information

-- Court: Queens County Criminal Court Case Number: 7Q007644

May 15, 1987

Dismissed

-- Criminal Possession Contr Sub-3rd:Narc Drug Intent To Sell  
    PL 220.16 Sub 01      Class B      Felony      NCIC 3599  
-- Criminal Sale Controlled Substance-3rd:Narcotic Drug  
    PL 220.39 Sub 01      Class B      Felony      NCIC 3599

---

#### ↓ Cycle 4 ↑

\* Cycle may not be supported by fingerprints

#### Arrest/Charge Information

Arrest Date: February 10, 1987 06:25 pm (18:25:00)

Name: THURMAN JEROME BROWN JR  
Date of Birth: April 16, 1965  
Sex: Male  
Race: Black  
SSN: 244-19-0446  
Age at time of crime/arrest: 21  
Address: 25-02 MOTT AV , ROCKAWAY, NY  
Fax Number: Q3512  
Place of Arrest: Queens County, NY  
Date of Crime: February 10, 1987  
Place of Crime:  
Criminal Justice  
    Tracking No.: 09788669M  
Arresting Agency: NYPD PCT 101  
Arresting Officer ID: 876425  
Arrest Case Number: 17750990

Fingerprint response on 08/17/2010 08:11 am for transaction 12839885

Arrest Number: Q87004518

Arrest Charges:

-- Criminal Possession Controlled Substance- 7th Degree

PL 220.03 Class A Misdemeanor Degree 7 NCIC 3599

### Court Case Information

-- Court: Queens County Criminal Court Case Number: 7Q004759

April 27, 1987

**Bench Warrant Issued**

September 11, 1989

**Returned On Warrant**

September 11, 1989

**Dismissed**

-- Criminal Possession Controlled Substance- 7th Degree

PL 220.03 Class A Misdemeanor NCIC 3599

-- Loitering Unlawful Use Controlled Substance

PL 240.36 Class B Misdemeanor NCIC 3599

September 11, 1989

**Sealed Upon Termination Of Criminal Action In Favor Of The Accused CPL160.50**

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↓ Cycle 3 ↑

### Arrest/Charge Information

Arrest Date: July 02, 1986 05:10 pm (17:10:00)

Name: THURMAN JEROME BROWN JR

Date of Birth: April 16, 1965

Sex: Male

Race: Black

Age at time of crime/arrest: 21

Address: 25-02 MOTT AVE, FAR ROCKAWAY, NY

Fax Number: Q13152

Place of Arrest: Queens County, NY

Arrest Type: Other

Date of Crime: July 02, 1986

Place of Crime: Queens County, NY

Criminal Justice

Tracking No.: 10265489R

Arresting Agency: NYCPD PCT 101

Arresting Officer ID: 868081

Arrest Case Number: 17750940

Fingerprint response on 08/17/2010 08:11 am for transaction 12839885

Arrest Number: Q86018240

Arrest Charges:

- Criminal Possession Controlled Substance-3rd Degree  
PL 220.16 Class B Felony Degree 3 NCIC 3599
- Criminal Sale Controlled Substance-3rd Degree  
PL 220.39 Class B Felony Degree 3 NCIC 3599

#### Court Case Information

-- Court: Queens County Supreme Court Case Number: 3816-86

October 06, 1986

#### Convicted Upon Plea Of Guilty

- Criminal Sale Controlled Substance-4th Degree  
PL 220.34 Class C Felony NCIC 3599

#### In Full Satisfaction of:

- Criminal Possession Controlled Substance-3rd Degree  
PL 220.16 Class B Felony NCIC 3599
- Criminal Sale Controlled Substance-3rd Degree  
PL 220.39 Class B Felony NCIC 3599

**Sentenced to:** Probation: 5 Year(s) Sentence Date: October 06, 1986

Term: 6 Month(s)

April 02, 1991

**Sentence Continued**

#### Incarceration/Supervision Information

##### Probation Information

Name: THURMAN JEROME BROWN JR  
Placed on Probation: October 06, 1986  
Max Expiration Date: October 05, 1991  
Supervision Agency: Queens County Probation Adult Investigations  
Jurisdiction Agency: Queens County Probation Adult Investigations  
Probation Officer ID : QC038  
Probation Registration Number: 608702  
Probation Case Number: QS8603550  
Probation Discharge Date: May 10, 1988  
Discharge Type: Other

##### Incarceration Admission Information

Admission Date: October 06, 1986

Fingerprint response on 08/17/2010 08:11 am for transaction 12839885

Admission Reason: Sentenced, Initial Entry; Unknown Type or Level  
Agency: NYC DOCS Correctional Institute for Men  
Inmate ID Number: 7865741  
Sentence to: Term: 6 Month(s)  
Max Expiration Date:  
Conditional Release Date: October 31, 1986  
Inmate Name: THURMAN JEROME BROWN JR  
Admission Charges:  
-- Criminal Sale Controlled Substance-4th Degree  
PL 220.34 Class C Felony Degree 4 NCIC 3599

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↓ Cycle 2 ↑

Youthful Offender.

#### Arrest/Charge Information

Arrest Date: May 27, 1981 11:35 am (11:35:00)

Name: THURMOND BROWN  
Date of Birth: April 16, 1965  
Sex: Male  
Race: Black  
Age at time of crime/arrest: 16  
Address: 15-20 BCH 12TH ST, FAR ROCKAWAY, NY  
Fax Number: Q9231  
Place of Arrest: Queens County, NY  
Arrest Type: Other  
Date of Crime: May 27, 1981  
Place of Crime: Queens County, NY  
Criminal Justice  
Tracking No.: 06829196H  
Arresting Agency: NYPD PCT 101  
Arresting Officer ID: 857886  
Arrest Number: 10111800  
Arrest Charges:  
-- Burglary-3rd Degree: Illegal Entry with Intent to Commit a Crime  
PL 140.20 Class D Felony Degree 3 NCIC 2202  
-- Criminal Mischief-4th Degree  
PL 145.00 Class A Misdemeanor Degree 4 NCIC 2999  
-- Possession Stolen Property-3rd Degree  
PL 165.40 Class A Misdemeanor Degree 3 NCIC 2804  
-- Petit Larceny  
PL 155.25 Class A Misdemeanor Degree 0 NCIC 2399

#### Court Case Information

Fingerprint response on 08/17/2010 08:11 am for transaction 12839885

-- Court: Queens County Supreme Court Case Number: 1538-81

May 27, 1981

**Charge Not Considered By Grand Jury**

-- Petit Larceny

PL 155.25 Class A Misdemeanor NCIC 2399

December 14, 1981

**Adjudicated Youthful Offender**

-- Burglary-3rd Degree: Illegal Entry with Intent to Commit a Crime  
PL 140.20 Class D Felony

NCIC 2202

**Sentenced to:** Probation: 5 Year(s) Sentence Date:

-- Criminal Mischief-4th Degree  
PL 145.00 Class A Misdemeanor NCIC 2999

**Sentenced to:** Probation: 5 Year(s) Sentence Date:

-- Possession Stolen Property-3rd Degree  
PL 165.40 Class A Misdemeanor NCIC 2804

**Sentenced to:** Probation: 5 Year(s) Sentence Date:

-- Court: Queens County Criminal Court Case Number: 1Q010815

**Initial Report Of Docket Number**

**Incarceration/Supervision Information**

**Probation Information**

Name:

THURMAN JEROME BROWN JR

Placed on Probation:

December 14, 1981

Max Expiration Date:

December 13, 1986

Supervision Agency:

Queens County Probation Adult Supervision- Special  
Offenders

Jurisdiction Agency

Queens County Probation Adult Supervision- Special  
Offenders

Probation Officer ID :

QC005

Probation Registration Number: 420123

Probation Case Number: QS8101446

Probation Discharge Date: January 06, 1982

Discharge Type: Early Discharge

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**Cycle 1** 

**Violent Felony Offense**

**Youthful Offender.**

**Juvenile Offender.**

**Arrest/Charge Information**

Arrest Date: January 13, 1981 10:35 pm (22:35:00)

Name: THURMAN JEROME BROWN JR  
Date of Birth: April 16, 1965  
Sex: Male  
Race: Black  
Age at time of crime/arrest: 15  
Address: 1506 BEACH 12TH ST, FAR ROCKAWAY, NY  
Fax Number: NA517  
Place of Arrest: Queens County, NY  
Arrest Type: Unknown  
Date of Crime: January 13, 1981  
Place of Crime: Town of Hempstead, Nassau County , NY  
Criminal Justice  
    Tracking No.: 06283737Q  
Arresting Agency: Nassau County Police Department- Communication Bureau  
Arresting Officer ID: 2981  
Arrest Number: 168162  
Arrest Charges:  
    -- Robbery-1st Degree  
    PL 160.15 Class B Felony Degree 1 NCIC 1205

**Court Case Information**

-- Court: Nassau County 1st District Court Case Number: F219  
January 14, 1981  
**Initial Report Of Docket Number**

-- Court: Nassau County Court Case Number: 52286

June 19, 1981

**Adjudicated Youthful Offender**

-- Robbery-1st Degree  
PL 160.15 Class B Felony NCIC 1205

**Sentenced to:** Probation: 5 Year(s) Sentence Date:  
Term: 30 Day(s)

**Incarceration/Supervision Information**

**Probation Information**

Name: THURMAN JEROME BROWN JR  
Placed on Probation: June 19, 1981  
Max Expiration Date: June 18, 1986  
Supervision Agency: Queens County Probation Adult Supervision- Special Offenders  
Jurisdiction Agency: Queens County Probation Adult Supervision- Special Offenders  
Probation Officer ID : QC005  
Probation Registration Number: 403737  
Probation Case Number: 000052180  
Probation Discharge Date: January 02, 1984  
Discharge Type: Early Discharge

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### ● Other History Related Information

There is no Other History Related Information associated with this history.

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### ● Job/License Information

There is no Job/License Information associated with this history.

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### ● Additional Information

**Sealed 160.50/160.50 ACD/160.55** - Utilization of any sealed 160.50/160.50 ACD/160.55 data is restricted to official purposes authorized by law and should not be further disseminated except upon specific authorization of a court or where specifically required or permitted by statute.

**Youthful Offender** - Utilization of the Youthful Offender data is restricted to official purposes authorized by law and should not be further disseminated except upon specific authorization of a court or where specifically required or permitted by statute.

**Sentencing** - Where an individual is sentenced June 1, 1981 or later on more than one charge within a docket, the sentence may be considered to be concurrent unless identified as consecutive.

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**WARNING:** Release of any of the information presented in this computerized Case History to unauthorized individuals or agencies is prohibited by federal law TITLE 42 USC 3771b.  
This report is to be used for this one specific purpose as described in the Use and Dissemination Agreement your agency has on file with DCJS. All information presented herein is as complete as the data furnished to DCJS.

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New York State Division of Criminal Justice Services

4 Tower Place

Albany NY 12203-3764

Tel: 1-800-262-DCJS

Sean M. Byrne, Acting Commissioner of the NYS Division of Criminal Justice Services

## Appendix F

New York State Division of Criminal Justice Services  
Record Review and Challenge Unit  
5<sup>th</sup> Floor  
4 Tower Place  
Albany, NY 12203

DATE: 11-01-07	NAME: THURMAN J. BROWN	ID#: 98A2656
FACILITY: ONEIDA CORRECTIONAL FACILITY		NYSID#: 4728379R

RESPONSE TO CHALLENGE/CORRESPONDENCE DATED: 10-25-2007

EVENT DATE(S): 09-19-1996

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For verification of information concerning seal orders, you need to contact the court of adjudication. According to your criminal history report, all seal orders came from the Nassau County 1<sup>ST</sup> District Court. Please contact them for assistance in this matter.



---

James W. Stanco  
Chief, Records Management Bureau

JWS:eap

New York State Division of Criminal Justice Services  
Record Review and Challenge Unit  
5<sup>th</sup> Floor  
4 Tower Place  
Albany, NY 12203

DATE: 10-18-07	NAME: THURMAN J. BROWN	ID#: 08A2656
FACILITY: ONEIDA CORRECTIONAL FACILITY		NYSID#: 4728379R

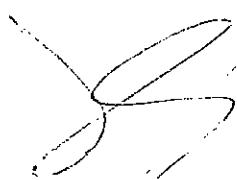
RESPONSE TO CHALLENGE/CORRESPONDENCE DATED: 10-09-2007

EVENT DATE(S): 09-19-1996 (CASE #'S 29226/96, 29222/96, 29223/96, 29224/96,  
29225/96 and 96736-96)

The above case numbers are **all sealed**. Sealed arrest data appears on **YOUR** copy of the criminal history record because you are entitled by law to review **ALL** criminal history record information DCJS has on file concerning you. **Section 160.50, subdivision 1, paragraph d, of the NYS Criminal Procedure Law**, specifies when such sealed arrest events may be disseminated. Sealed arrest data cannot be expunged (**removed**) from your criminal history report. For your information, sealed arrest events are only released under the following conditions:

- In response to fingerprint inquiry regarding a job applicant for peace/police officer employment
- In response to an inquiry regarding an application for a firearms license
- Pursuant to a court order
- In response to a request for a Record Review, which can only be requested by you or your attorney as authorized by you.

Be advised, the Division of Criminal Justice Services (DCJS) does not maintain copies of seal orders.



James W. Stanco  
Chief, Records Management Bureau

## Appendix G

SR:MED  
brown.brief

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

THURMAN BROWN,

Plaintiff,

- against -

Civil Action  
No. CV-00-7182

(Mishler, J.)  
(Orenstein, M.J.)

UNITED STATES SUPREME COURT  
CHIEF JUSTICE WILLIAM H. REHNQUIST,  
ASSOCIATE JUSTICE JOHN PAUL STEVENS,  
ASSOCIATE JUSTICE SANDRA DAY O'CONNOR,  
ASSOCIATE JUSTICE ANTONIN SCALIA,  
ASSOCIATE JUSTICE ANTHONY M. KENNEDY,  
ASSOCIATE JUSTICE DAVID H. SOUTER,  
ASSOCIATE JUSTICE CLARENCE THOMAS,  
ASSOCIATE JUSTICE RUTH BADER GINSBERG,  
ASSOCIATE JUSTICE STEPHEN G. BREDER, et al.,

Defendants.

----- X

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS THE  
AMENDED COMPLAINT BY THE CHIEF JUSTICE OF THE UNITED STATES AND  
THE ASSOCIATES JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

ALAN VINEGRAD  
United States Attorney  
Eastern District of New York  
610 Federal Plaza, 5<sup>th</sup> Floor  
Central Islip, New York 11722

Mary Elizabeth Delli-Pizzi  
Assistant U.S. Attorney  
(Of Counsel)

## I. PRELIMINARY STATEMENT

Defendants the Chief Justice of the United States ("Chief Justice") and the Associate Justices of the Supreme Court ("Associate Justices") respectfully submit this Memorandum of Law in support of their Motion to Dismiss the Amended Complaint. Plaintiff claims that his constitutional rights were violated when the Chief Justice and the Associate Justices denied Plaintiff's Petition for a Writ of Certiorari ("Petition"). These claims must be dismissed because the sole remedy for the relief that Plaintiff seeks is by a Petition for Writ of Habeas Corpus rather than a civil rights action. The Court should not construe this action as a habeas action because the Chief Justice and the Associate Justices are not proper defendants for habeas corpus purposes and the Plaintiff has failed to name the proper defendant. Additionally, the doctrine of collateral estoppel precludes Plaintiff's claims.

Further, the Chief Justice and the Associate Justices are absolutely immune from suit for actions taken in their judicial capacity. Even assuming the Chief Justice and the Associate Justices were not immune, the Plaintiff has failed to state a constitutional claim against the Chief Justice or the Associate Justices in their individual capacities. Accordingly, Plaintiff's Amended Complaint must be dismissed for failure to state a claim for which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

## II. FACTUAL BACKGROUND<sup>1</sup>

Plaintiff was arrested on or about September 19, 1996, by the Nassau County Police Department, on various counts of burglary, robbery, grand larceny and criminal possession of stolen property. Plaintiff's Amended Complaint, p.23 and Exhibit A, attached thereto. A grand jury was convened and Plaintiff was indicted under indictment numbers 96469 and 96467. Plaintiff's Amended Complaint, p.23 and Exhibit A, attached thereto. During pre-trial hearings Plaintiff claimed that the Grand Jury Testimony provided to him under People v. Rosario, 9 N.Y.2d 286, cert. denied 368 U.S. 866 (1961), ~~was incomplete and had been doctored~~. Plaintiff's Amended Complaint, pp.6-7. On May 27, 1997, Justice Victor M. Orb of the Supreme Court of the State of New York, Nassau County, found no Rosario violation and found that the Grand Jury Transcript ~~merely duplicated the same testimony twice~~. Plaintiff's Amended Complaint, p. 11. Plaintiff was convicted by a jury on September 22, 1997 and was sentenced on December 5, 1997. Plaintiff's Amended Complaint p.3, ¶¶ 5 & 6. Plaintiff appealed his conviction to the Supreme Court of the State of New York, Appellate Division, Second Judicial Department. Plaintiff's Amended Complaint, p.4, ¶ 8 and Exhibit D, attached thereto. On February 22, 1999, the Appellate Division affirmed Plaintiff's conviction. Plaintiff's Amended Complaint, p. 18, ¶ 24 and Exhibit E, attached thereto.

Thereafter, Plaintiff sought leave to appeal to the Court of Appeals of the State of New York. Plaintiff's Amended Complaint, p. 4, ¶ 9. On April 14, 1999, the Court of Appeals denied Petitioner's request for leave to appeal. Plaintiff's Amended Complaint, p. 4, ¶ 9 and Exhibit F,

<sup>1</sup> For the purposes of this motion to dismiss, the Court and the defendants must accept the factual allegations set forth in the complaint as true. Leatherman v. Tarrant County Narcotics Intelligence Coordination Unit, 507 U.S. 163 (1993). The following statement of facts therefore sets forth the allegations of the Complaint.

attached thereto. On May 28, 1999, Petitioner filed a Petition for Writ of Certiorari with the United States Supreme Court. Plaintiff's Amended Complaint, p. 4, ¶ 10 and Exhibit 1, attached hereto. On October 8, 1999, the Supreme Court denied Plaintiff's Petition for Writ of Certiorari. Plaintiff's Amended Complaint, p. 4, ¶ 11 and Exhibit 2, attached hereto.

### III. ARGUMENT

#### PLAINTIFF HAS FAILED TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED

##### A. THE STANDARD FOR GRANTING A MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, an action must be dismissed where the plaintiff has failed to state a claim upon which relief can be granted. Dismissal is required when the plaintiff is not entitled to any relief under any statement of the facts set forth in the complaint. See Allen v. WestPoint-Pepperell, Inc., 945 F.2d 40, 44 (2d Cir. 1991); Escalera v. New York City Housing Authority, 425 F.2d 853, 857 (2d Cir.), cert. denied, 400 U.S. 853 (1970). On a motion to dismiss, the facts in the complaint are presumed to be true, and all reasonable inferences are drawn in favor of the plaintiff. See EEOC v. Staten Island Savings Bank, 207 F.3d 144, 148 (2d Cir. 2000); Lee v. Bankers Trust Co., 166 F.3d 540, 543 (2d Cir. 1999); Press v. Chem. Inv. Servs. Corp., 166 F.3d 529, 534 (2d Cir. 1999). A complaint must be dismissed if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). These principles compel dismissal of Plaintiff's Amended Complaint.

B. PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF  
IS NOT COGNIZABLE UNDER 42 U.S.C. 1983

Plaintiff alleges jurisdiction against the Chief Justice and the Associate Justices under 42 U.S.C. § 1983. To state a claim under § 1983, Plaintiff must show that (1) the defendant officials acted under "color of state law"; and (2) their conduct or actions deprived Plaintiff of a right, privilege, or immunity guaranteed by the Constitution or laws of the United States. See Pitchell v. Callan, 13 F.3d 545, 547- 48 (2d Cir. 1994). Therefore, a defendant cannot be held liable under § 1983 unless he or she acted under color of state law. Powell v. Kopman, 511 F.Supp. 700, 703-704 (S.D.N.Y. 1981)(dismissing a § 1983 action against Internal Revenue Service officers, since the statute "does not allow relief against actions of federal officers acting under color of federal law"). The Plaintiff cannot possibly show that the Chief Justice and the Associate Justices acted under "color of state law". The actions of the Chief Justice and the Associate Justices were clearly taken in their role as federal judges under federal law. Accordingly, Plaintiff's claims should be dismissed in their entirety.

Should the Court, however, deem the Plaintiff's claims as amenable under Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971)<sup>1</sup>, the claims are still subject to dismissal.

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<sup>1</sup> Bivens held that a court could infer a cause of action for damages against federal officials acting under color of federal law to deprive plaintiff of a constitutional right. Id. Because Bivens actions are similar to claims brought under Section 1983 in terms of the interests being protected, the relief which may be granted and the defenses which may be asserted, federal courts typically incorporate Section 1983 law into Bivens actions. Tavarez v. Reno, 54 F.3d 109, 110 (2d Cir. 1995); Robinson v. Overseas Military Sales Corp. 21 F.3d 502, 510 (2d Cir. 1994); Polanco v. U.S. DEA, 158 F.3d 647, 653 (2d Cir. 1988).

C. **HABEAS CORPUS IS THE ONLY AVENUE AVAILABLE FOR THE PLAINTIFF TO SEEK INJUNCTIVE RELIEF**

Plaintiff's Amended Compliant against the Chief Justice and the Associate Justices seeks ~~declaratory and injunctive relief, ordering the State Court to hear Plaintiff's appeal over again on a complete and accurate record~~<sup>2</sup>. Plaintiff's Amended Compliant, p.5, ¶ 1. The essence of Plaintiff's claim is that the state court judgment was in error based upon an incomplete and inaccurate grand jury record. Since plaintiff is challenging the very fact or duration of his physical imprisonment, his sole federal remedy is by a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, rather than by a civil rights action. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973); Jenkins v. Haubert, 179 F.3d 19, 22-23 (2d Cir. 1999).

In Preiser, the Court held that when a prisoner challenges the fact or duration of his confinement and seeks immediate release, the claim is within the "core of habeas corpus" which is the exclusive remedy. Id. at 484. Such a claim may not be litigated in a federal court § 1983 action because Congress intended that the "specific" federal habeas corpus statute would control over the more "general" § 1983 remedy, and become the "exclusive" federal remedy. Id. at 490. Thus, any claim for injunctive relief must be dismissed. See also Heck v. Humphreys, 512 U.S. 477, 486-87 (1994) ("habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983."); Jenkins v. Daubert, 179 F.3d 19, 23 (2d Cir. 1999) ("[w]here the fact or duration of a prisoner's confinement is at issue, § 1983 is unavailable, and only [habeas relief under 28 U.S.C.] § 2254(b) with its exhaustion requirement may be

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<sup>2</sup> While Heck was a § 1983 action for money damages, this Court has extended the Heck doctrine to Bivens claims. See Tavarez v. Reno, 54 F.3d 109, 110 (2d Cir. 1995)(*per curiam*).

employed.”).

Thus, as long as Plaintiff meets the custody and the other jurisdictional requirements of 28 U.S.C. § 2254, habeas is the appropriate action to remedy constitutional violations. See Boudin v. Thomas, 732 F.2d 1107, 1110 (2d Cir. 1984). Plaintiff’s claim for injunctive relief clearly challenges the validity of his conviction. Though the plaintiff does not expressly request immediate release from prison, that is what he implicitly requests when seeking declaratory and injunctive relief for the defendants’ violations of his constitutional rights. Simply put, Plaintiff seeks to vacate his conviction through injunctive relief. In order for this Court to reach a favorable decision for the plaintiff in this action, the plaintiff would have to prove the unlawfulness of his conviction. Because Plaintiff must bring this challenge by a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, this action must be dismissed. Preiser, 411 U.S. at 500; Taylor v. Cavanaugh, 640 F.2d 450, 451 (2d Cir. 1981) (“when a state prisoner is challenging his imprisonment in state facilities, his sole federal remedy is a writ of habeas corpus”); Abella v. Rubino, 63 F.3d 1063, 1066 (11<sup>th</sup> Cir. 1995) (“[I]njunctive and declaratory relief claims which challenge the fact or duration of confinement are simply never cognizable in § 1983 or Bivens actions.”); Dees v. Murphy, 794 F.2d 1543, 1545 (11<sup>th</sup> Cir. 1986) (citing Preiser as support for dismissal of Bivens claim challenging validity of conviction).

**D. THE COURT SHOULD NOT CONSTRUE PLAINTIFF’S AMENDED COMPLAINT AS A PETITION FOR A WRIT OF HABEAS CORPUS**

Prior to the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) Pub. L. No. 104-132, 110 Stat. 1214, courts in this Circuit routinely converted actions brought pursuant to § 1983 and other statutes into habeas corpus actions where the latter was the

appropriate action. See e.g. United States v. Detrich, 940 F.2d 37, 38 (2d Cir. 1991)(treating motion brought pursuant to Fed. Rule Crim. P. 35(a) as a motion under 28 U.S.C. § 2255), cert. denied 502 U.S. 1121 (1992); Lakram v. Failla, 1993 WL 657858 at \*2 (E.D.N.Y. 1993)(treating action brought under § 1983 as habeas petition under 28 U.S.C. § 2254); Epps v. Cuomo, 1988 WL 151703 \*1 (W.D.N.Y. 1988)(same).

However, the enactment of AEDPA brings into play new considerations and places stringent limits on a prisoner's ability to bring a habeas petition. Accordingly, the district court should not characterize a motion purportedly made under another statute as a motion made under the habeas statute. See Adams v. United States, 155 F.3d 582, 584 (2d Cir. 1998)(per curiam)(district court should only recharacterize such motions where the litigant, "with knowledge of the potential adverse consequences of such characterization, agrees to have the motion so recharacterized," or where the court "offers the movant the opportunity to withdraw the motion rather than have it so recharacterized."); see also United States v. Novak, 181 F.3d 83 (table), 1999 WL 357846 at \*2 (2d Cir. 1999)(declining under Adams to construe request for coram nobis as habeas petition), cert. denied, 528 U.S. 874(1999); Birkett v. United States, 1999 WL 754151 at \*3 (E.D.N.Y. 1999)(The Second Circuit "has cautioned district courts not to recharacterize motions made under one rule or statute into habeas corpus motions without obtaining the informed consent of the petitioner.").

Even if the Court were to construe this action as a Petition for a Writ of Habeas Corpus, which it should not, the action must still be dismissed as the Chief Justice and the Associate Justices are not proper defendants for habeas corpus purposes.

The writ of habeas corpus is properly directed to the custodian of the petitioner. Braden v. Thirtieth Judicial Court, 410 U.S. 484, 494-95 (1973); Billiteri v. United States Bd. of Parole, 541

F.2d 938, 948 (2d Cir. 1976); see 28 U.S.C. § 2243 (1998). The Chief Justice and the Associate Justices are not the custodian of the Plaintiff, and as such, are not proper defendants in a habeas action. The proper defendant for habeas corpus purposes is the warden of the state prison in which Plaintiff is incarcerated. See Billiteri, 541 F.2d at 948 (“In order for court to entertain a habeas action, it must have jurisdiction over the petitioner’s custodian.”); Gaito v. Strauss, 368 F.2d 787 (3d Cir.), cert. denied 386 U.S. 977 (1966) (federal district court could not treat state prisoner’s civil rights complaint as petition for writ of habeas corpus, inasmuch as warden of state prison in which prisoner was incarcerated was not a party); DeSousa v. Abrams, 467 F. Supp. 511 (S.D.N.Y. 1979) (failure to name as respondent party having custody of the state prisoner is fatal to the right to a writ of habeas corpus and operates to deprive a federal court of its jurisdiction in the matter); McCune v. U.S., 374 F. Supp. 946 (S.D.N.Y. 1974) (court did not have jurisdiction of prisoner’s habeas petition where neither petitioner nor warden was within district).

Petitioner is currently detained by the New York State Department of Corrections at Green Haven Prison, in Stormville, New York. Since Plaintiff has failed to name the proper custodian in this action, the action must be dismissed. Indeed, 28 U.S.C. § 2242 provides that the petition shall allege “the name of the person who has custody over him and by virtue of what claim or authority, if known.” 28 U.S.C. § 2243 provides that the writ, or order to show cause, “shall be directed to the person having custody of the person detained”. Id. Additionally, Habeas Corpus Rule 2(a) provides that “the state officer having custody of the applicant shall be named as respondent”. See Braden, 410 U.S. at 494-495 (it still remains an essential aspect of the habeas corpus writ that it acts “upon the person who holds (the prisoner) in what is alleged to be unlawful custody”); Billiteri, 541 F.2d 948; English v. Miller, 341 F. Supp. 714, 715 (E.D. Va. 1972), rev’d on other grounds, 481 F.2d 188 (4<sup>th</sup> Cir. 1973) (state attorney general and state director or corrections

were unnecessary parties to habeas petition; appropriate respondent was superintendent of penitentiary who had custody of petitioner). Accordingly, since the Chief Justice and the Associate Justices are not proper defendants, and the Plaintiff's custodian has not been properly named, this action must be dismissed.

E. ASSUMING ARGUENDO THAT PREISER DOES NOT BAR RELIEF HERE, AS IT DOES, THE DOCTRINE OF COLLATERAL ESTOPPEL PRECLUDES PLAINTIFF'S CLAIMS

Should the Court decline to dismiss this civil rights action under Preiser, then this civil rights action is barred by the doctrine of collateral estoppel as a result of the state court's rejection of Plaintiff's Rosario claims.

In federal courts, the doctrine of collateral estoppel precludes re-litigation of issues actually litigated in an initial suit, whether or not the second suit is based on the same cause of action. Montana v. United States, 440 U.S. 147, 153 (1979). Collateral estoppel prevents a plaintiff from re-litigating issues which he has previously lost in other suits. Furthermore, prior proceedings based on a separate basis of recovery or criminal proceedings may be the basis for applying collateral estoppel to allegations contained in a civil rights action pursuant to 42 U.S.C. § 1983. Allen v. McCurry, 449 U.S. 90, 94-95 (1980); Bricker v. Crane, 468 F.2d 1228, 1231 (1<sup>st</sup> Cir. 1972), cert. denied, 410 U.S. 930 (1973) (" the Civil Rights Act is not a vehicle for collateral attacks upon state court judgments. . . ."); Mitchell v. National Broadcasting Co., 553 F.2d 265 (2d Cir. 1977)(unlike federal habeas corpus statutes, civil rights acts do not provide for collateral review of state court judgments).

This clear that a judgment entered by a state court of competent jurisdiction must be accorded full faith and credit by federal courts and that determinations made by a state court can

under controlling principles of res judicata and collateral estoppel, preclude re-litigation in the federal system. American Surety Co. v. Baldwin, 287 U.S. 156 (1932); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). This applies even to state determinations of fact which, if binding, limit the ability to pursue federal constitutional rights in federal courts. See Taylor v. New York Transit Authority, 433 F.2d 665 (2d Cir. 1970).

In this action, Plaintiff is collaterally estopped from bringing a claim based upon the accuracy of the grand jury transcripts, as this issue was already resolved by the lower court. See Exhibits F, I, K, and N attached to Plaintiff's Amended Complaint. Since Plaintiff unsuccessfully sought review of this claim before the appeals court, the decision of the appeals court is entitled to preclusive effect in federal court. Respass v. New York City Police Department, 852 F.Supp. 173, 177 (E.D.N.Y. 1994)(citing Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 85 (1984), and Allen v. McCurry, 449 U.S. 90, 97-99(1980)). Disappointed by the outcome of this litigation, Plaintiff simply cannot now seek review in the form of a civil rights action. Bricker, 468 F.2d at 1232.

Accordingly, since Plaintiff is precluded from re-litigating the issue in this Court, his sole remedy is a habeas corpus proceeding, pursuant to 28 U.S.C. § 2254, in which res judicata would not be a bar. Fay v. Noia, 372 U.S. 391 (1963); Brown v. Allen, 344 U.S. 443 (1953); Thistlethwaite v. City of New York, 362 F. Supp. 88 (S.D.N.Y. 1971).

**F. UNDER THE DOCTRINE OF JUDICIAL IMMUNITY  
THE CHIEF JUSTICE AND ASSOCIATE JUSTICES  
ARE IMMUNE FROM SUIT**

In the event this Court fails to dismiss this action on one of the above-enumerated grounds, this Court must resolve any questions regarding absolute immunity before it entertains

Plaintiff's constitutional claims. Mitchell v. Forsyth, 472 U.S. 511 (1985)(absolute immunity is a threshold question).

**1. THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES  
ARE ABSOLUTELY IMMUNE FROM SUIT FOR ACTIONS  
FOR INJUNCTIVE RELIEF**

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Plaintiff brought this action for injunctive relief against the Chief Justice and the Associate Justices for acts taken in their official judicial capacity. Though it is well-settled law that judges are absolutely immune from liability for suit for money damages (see section E(2) infra), it is not clear that judges are immune from actions seeking injunctive relief. See e.g. Pulliam v. Allen, 466 U.S. 522 (1984)(holding that judicial immunity did not extend to claims for injunctive relief); Wood v. Stickland, 402 U.S. 308 (1975) ("immunity from damages does not ordinarily bar equitable relief"); Dorman v. Higgins, 821 F.2d 133, 137 (2d Cir. 1987)(applying Pulliam to a Bivens action against federal judicial officers). Under these precedents the Chief Justice and the Associate Justices would not have been entitled to immunity for injunctive relief. But see Mullis v. United States Bankruptcy Court, 828 F.2d 1385, 1394 (9<sup>th</sup> Cir. 1987)(declining to apply Pulliam to Bivens suits against federal judicial officers and holding that such suits are barred by judicial immunity regardless of the relief sought).

However, in 1996 Congress enacted the Federal Courts Improvement Act of 1996 ("FCIA") which amended § 1983 to provide that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." Pub. L. No. 104-317, § 309(c), 110 Stat. 3853 (1996)(amending 42 U.S.C. § 1983); see Montero v. Travis, 171 F.3d 757, 761 (2d Cir. 1999); Hili v. Sciarrotta, 140 F.3d 210, 215 (2d Cir. 1998); Ackerman v. Doyle, 43 F.Supp.2d 265, 272 (E.D.N.Y. 1999).

Although neither the Supreme Court nor the Second Circuit have addressed whether the limitations in § 309(c) apply to Bivens actions, at least one appellate court and several district courts have addressed this issue and held that it does apply. See Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000) (the doctrine of absolute judicial immunity serves to protect federal judges from injunctive relief as well as money damages); Kampfer v. Scullin, 989 F.Supp. 194, 201 (N.D.N.Y. 1997) (holding that § 309(c) of the FCIA applies in Bivens suits); Jones v. Newman, 1999 WL 493429 (S.D.N.Y. 1999) (amendment to § 1983 ~~also limits~~ any injunctive relief available against federal judges).

As the Court stated in Kampfer, “Because § 1983 law is incorporated into Bivens actions, Tavarez, 54 F.3d at 110, the court finds that § 309(c) of the FCIA applies in this case as well. Consequently, the doctrine of absolute judicial immunity bars the Kampfers’ suit for injunctive relief unless Judge Scullin violated a declaratory decree or declaratory relief was unavailable.” Id. at 201. The Court found that it is “only sensible that Congress’s legislative reversal of Pulliam in the § 1983 context should be applied in the Bivens context as well. Id. Additionally, the Court in Jones found that the “Senate Committee Report on the FCIA itself specified that the Act’s extension of judicial immunity was intended to protect ‘Federal as well as State judicial officers,’ S. Rep. No. 104-366, 1996 WL 520492, at \*85 (Sept. 9, 1996).” Id. at 1999 WL 493429,

\* 7.

Following this line of cases, this Court should find that § 309(c) of the FCIA applies in this case, and that the Plaintiff is barred from seeking injunctive relief. Plaintiff does not allege, and the record does not suggest, that a declaratory decree was violated or that declaratory relief was unavailable. Accordingly, Plaintiff’s claim must be dismissed. See Montero, 171 F.3d at 761 (dismissing claim for injunctive relief against judicial officer where plaintiff alleged neither

violation of declaratory decree nor unavailability of declaratory relief); Ackerman, 43 F.Supp. at 273(dismissing action against judicial officers because plaintiff failed to allege that a declaratory decree was violated or that declaratory relief was unavailable).

2. **THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES ARE ABSOLUTELY IMMUNE FROM SUIT FOR ACTIONS FOR MONETARY DAMAGES**

Should the Court however, construe Plaintiff's claims against the Chief Justice and the Associate Justices as one for money damages, the Chief Justice the Associate Justices are absolutely immune from suit. Additionally, the evolution of this doctrine of absolute immunity for judicial acts for damages is instructive ~~and lends support to~~ the position that it should be extended to actions for injunctive relief.

Such a suit is impermissible under the well-settled rule that judges are absolutely immune from liability for damages for acts committed within their judicial discretion. See e.g. Stump v. Sparkman, 435 U.S. 349, 359 (1978)([a] judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors).

Judges have been protected from suit by an absolute immunity that is rooted in the common law and dates back to the seventeenth century. Tucker v. Outwater, 118 F.3d 930, 932 (2d Cir. 1997), and cases cited therein. The Supreme Court adopted the doctrine of judicial immunity over a hundred years ago in Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 348 (1871), recognizing that judges must be protected from inhibiting damages suits because they frequently must determine “[c]ontroversies involving not merely great pecuniary interests, but the liberty and character of the parties, and consequently exciting the deepest feelings. . . . [where] there is great conflict in the evidence and great doubt as to the law which should govern their situation.” Id. In fact, there are “few doctrines

more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction.” Pierson v. Ray, 386 U.S. 547, 553-54 (1967); see Mireles v. Waco, 502 U.S. 9, 11-13 (1991); Forrester v. White, 484 U.S. 219, 225-28 (1988); Stump 435 U.S. at 359; Fields v. Soloff, 920 F.2d 1114, 1119 (2d Cir. 1990). Significantly, the Supreme Court has noted that judicial immunity “has never been denied . . . in the courts of this country.” Forrester, 484 U.S. at 225 (citing Bradley, 80 U.S. (13 Wall.) at 348).

The doctrine of judicial immunity allows judges to act independently and without fear of consequences to themselves. Stump, 435 U.S. at 355; Pierson, 386 U.S. at 554. A judge must have the freedom “to act upon his own convictions without apprehension of personal consequences to himself.” Shuster v. Oppelman, 962 F. Supp. 394, 396 (S.D.N.Y. 1997) (quoting Mireles, 502 U.S. at 10). Judges “should not have to fear that unsatisfied litigants may hound [them] with litigation charging malice or corruption.” Jones v. Newman, 1999 WL 493429, \*6 (S.D.N.Y) (quoting Pierson, 962 U.S. at 554).

Because the allegations against the Chief Justice and the Associate Justices are based upon conduct which is purely judicial in nature, each of them is entitled to absolute immunity from Plaintiff’s claims, and the claims should be dismissed.

**G. PLAINTIFF HAS FAILED TO STATE A CONSTITUTIONAL CLAIM AGAINST THE CHIEF JUSTICE OR THE ASSOCIATE JUSTICES**

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**1. PLAINTIFF HAS FAILED TO MAKE SPECIFIC ALLEGATIONS OF FACT INDICATING THAT THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES VIOLATED HIS CONSTITUTIONAL RIGHTS**

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To survive a motion to dismiss, a complaint alleging a constitutional violation “must contain specific allegations of fact indicating a deprivation of constitutional rights.” See Rivera v.

Goord, 119 F.Supp.2d 327, 335 (S.D.N.Y. 2000). To hold an individual liable for a deprivation of a plaintiff's constitutional rights, the plaintiff must prove that the particular individual was personally involved in the alleged deprivation. See Wright v. Smith, 21 F.3d 496, 501 (2d Cir. 1994)(personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages).

A civil rights complaint must do more than set forth "broad, simple and conclusory" allegations that the plaintiff's rights have been violated. Alfaro Motors, Inc. v. Ward, 814 F.2d 883, 887 (2d Cir. 1987). "[Section] 1983 does not encompass vicarious liability . . . a plaintiff must demonstrate the defendant's direct or personal involvement in the actions which are alleged to have caused the constitutional deprivation." Spencer v. Doe, 139 F.3d 107, 112 (2d Cir. 1998). The "complaint must contain specific allegations of fact which indicate a deprivation of constitutional rights." Alfaro, 814 F.2d at 887.

Plaintiff has simply failed to allege any actions by the Chief Justice or the Associate Justices in their individuals capacities which indicate a deprivation of the Plaintiff's constitutional rights under federal law. "Personal involvement of [the named] defendants in alleged constitutional deprivations is a prerequisite to an award of damages under [42 U.S.C.] § 1983." McKinnon v. Patterson, 568 F.2d 930, 934 (2d Cir. 1977) (collecting cases). The allegations against the Chief Justice and the Associate Justices relate solely to the denial of Plaintiff's Petition for Writ of Certiorari for which they are absolutely immune from suit. See Section B, supra.

Plaintiff appears to allege that the Chief Justice and the Associate Justices engaged in a conspiracy to deprive Plaintiff of his constitutional rights by denying his Petition for a Writ of Certiorari on an incomplete and inaccurate grand jury record. Plaintiff has simply failed to plead sufficient facts to establish the existence of a conspiracy. Even under the liberal reading required

for *pro se* complaints, see e.g., Branham v. Meachum, 77 F.3d 626, 628-29 (2d Cir. 1996), Plaintiff's Amended Complaint cannot survive dismissal.

A civil rights conspiracy claim must allege 1) a conspiracy; 2) for the purposes of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law; 3) an act in furtherance of the conspiracy; 4) whereby plaintiff was deprived of his rights or privileges as a United States citizen.

Gray v. Town of Darien, 927 F.2d 69, 73 (2d Cir. 1991)(citing United Board of Carpenter & Joiners Local 610 v. Scott, 463 U.S. 825, 828-829 (1983); Laverpool v. New York City Transit Auth., 760 F. Supp. 1046, 1055 (E.D.N.Y. 1991). Plaintiff must demonstrate that the Defendants "acted in a wilful manner, culminating in an agreement, understanding or 'meeting of the minds,' that violated the plaintiff's rights ... secured by the Constitution or the federal courts." Malsh v. Austin, 901 F. Supp. 757, 763 (S.D.N.Y. 1995).

Plaintiff has not pleaded any facts showing that the Chief Justice or the Associate Justices actually entered into such an agreement with each other or with any of the other Defendants. Plaintiff has simply stated that a conspiracy existed. Broad, conclusory and vague allegations of conspiracy are insufficient to state a civil rights claim. See e.g., Polur v. Raffe, 912 F.2d 52, 56 (2d Cir. 1990)(dismissing claims based on allegations of a conspiracy where plaintiff "relie[d] on diffuse averments but [did] not provide a factual basis for his claim or plead overt acts indicating the existence of a conspiracy"); San Filippo v. U.S. Trust Co. of New York, Inc., 737 F.2d 246, 256 (2d Cir. 1984); Sommer v. Dixon, 709 F.2d 173, 175 (2d Cir. 1983); Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977). Thus, Plaintiff's Amended Complaint fails to state a conspiracy claim upon which relief may be granted against the Chief Justice and the Associate Justices. The only facts that Plaintiff has alleged - - the only facts that he can allege - - are that the Chief Justice and the

Associate Justices denied his Petition for a Writ of Certiorari, and that is plainly insufficient to state a conspiracy claim.

Furthermore, even if Plaintiff had alleged facts sufficient to establish a conspiracy, his claims would still be barred under the Heck doctrine, as discussed below. See Amaker, 179 F.3d at 51; Candelaria v. Greifinger, 1997 WL 642464, at \*1-2 (N.D.N.Y. 1997) (Heck applies to § 1985 claims).

**2. PLAINTIFF HAS FAILED TO ESTABLISH THAT  
HIS CONVICTION WAS REVERSED, EXPUNGED  
OR OTHERWISE INVALIDATED**

The gravamen of Plaintiff's Amended Complaint is that he was convicted on an incomplete and inaccurate record. This claim directly calls into question the validity of Plaintiff's conviction. Since his conviction has not been "reversed, expunged, or otherwise invalidated" his claims must be dismissed. Heck, 512 U.S. at 486-87; Amaker, 179 F.3d at 51.

In Heck, the Supreme Court determined that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Id. at 486-87. Therefore, Plaintiff's claim must be evaluated on the following basis:

[The Court] must consider whether a judgment in favor of plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the [Court] determines that the plaintiff's actions even if successful will not demonstrate the invalidity of any outstanding criminal judgment against

the plaintiff, the action should be allowed to proceed, in the absence of some other bar to suit.

Id. at 487.

In this action, Plaintiff's claim directly calls into question the validity of his conviction. Plaintiff sole claim is that his conviction was obtained on a grand jury record that was incomplete and inaccurate. Plaintiff has failed to make a showing that his conviction has been reversed or otherwise invalidated. Absence such a showing, his claim must be dismissed. See Amaker, 179 F.3d at 51 (plaintiff's claim that his right to meaningful court access was denied by the withholding of exculpatory evidence was barred by Heck); Channer v. Mitchell, 43 F.3d 786, 787 (2d Cir. 1994) (allegations that two police officers committed "numerous acts of perjury and coerced witnesses to wrongfully identify [plaintiff]" in state court criminal proceedings were properly dismissed where plaintiff offered no proof that his conviction had been independently invalidated); Williams v. Schario, 93 F.3d 527, 529 (8<sup>th</sup> Cir. 1996) ("judgment in William's favor on his damages claim that defendants engaged in malicious prosecution and presented perjured testimony would 'necessarily imply the invalidity of his conviction or sentence'"') (quoting Heck, 512 U.S. at 487); Duamutef v. Morris, 956 F.Supp. 1112, 1115-18 (S.D.N.Y. 1997) (dismissing Section 1983 claims of malicious prosecution, false arrest, perjury, retaliation, and civil rights conspiracy under Heck where plaintiff's underlying conviction was valid).

Moreover, the district court lacks jurisdiction to the extent that Plaintiff desires the district court to review the state criminal court decision. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 484-486 (1983) (federal district courts lack jurisdiction "over challenges to state court decisions . . . arising out of judicial proceedings even if those challenges allege that the state court's actions were unconstitutional"); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416

(1923)(the district court does not possess appellate jurisdiction over decisions of the state courts).

The plaintiff may not seek reversal of a state court judgment simply by recasting his complaint in the form of a civil rights actions pursuant to 42 U.S.C. § 1983. See Tang v. Appellate Division of New York Supreme Court, First Department, 487 F.2d 138, 142 (2d Cir. 1973), cert. denied, 416 U.S. 907 (1977).

The Supreme Court has stated that under the Rooker-Feldman doctrine that, even where a state court judgment is not being appealed directly, “the District Court is in essence being called upon to review the state court decision” where “claims presented to a United States District Court are *inextricably, intertwined* with the state court’s [determination]”. Feldman, 460 U.S. at 483 n. 15 (citations omitted); Johnson v. Smithsonian Inst., 189 F.3d 180, 185 (2d Cir. 1999)(“The Rooker-Feldman doctrine . . . bars federal courts from considering claims that are ‘inextricably intertwined’ with a prior state court determination.”); Hachamovitch v. Debuono, 159 F.3d 687, 693 (2d Cir. 1998)(“The Rooker-Feldman doctrine provides that the lower federal courts lack subject matter jurisdiction over a case if the exercise of jurisdiction over that case would result in the reversal or modification of a state court judgment.”).

Whether a federal claim is “inextricably intertwined” with a state court judgment varies with the circumstances of a particular case. The crucial inquiry, however, is whether “the district court is in essence being called upon to review the state court decision.” Feldman, 460 U.S. at 483-84, n.16. The first standard under this doctrine looks to see whether the constitutional claims alleged are “separable from and collateral to” the merits of the state court judgment. See Texaco, Inc. v. Pennzoil, 784 F.2d 1133 (2d Cir. 1986), rev’d on other grounds, 481 U.S. 1, 21 (1987); Fariello v. Campbell, 860 F. Supp. 54, 65 (E.D.N.Y. 1994). The second standard under this doctrine looks to see how dependent the merits of the federal claim are on the state court decision. Texaco,

481 U.S. at 25; Fariello, 860 F. Supp. at 65.

Applying these standards to the facts of this case, Plaintiff cannot possibly prevail. Plaintiff's case is "inextricably intertwined" with the state court judgment. The essence of Plaintiff's claim is that the state court judgment was in error based upon an incomplete and inaccurate grand jury record. In order to grant the Plaintiff the relief that he is seeking in this case, the court would have to determine that the conviction was in error. This court is simply without jurisdiction to take any such action, absent a federal statute, such as the habeas statute, specifically authorizing such review. Feldman, 460 U.S. at 484, n.16. Accordingly, this action must be dismissed.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff's Amended Complaint against the Chief Justice and the Associate Justices of the Supreme Court must be dismissed in its entirety with prejudice.

Dated: Central Islip, New York  
December 28, 2001

Respectfully submitted,

ALAN VINEGRAD  
United States Attorney  
Eastern District of New York  
Attorney for The Chief Justice of the United States  
and the Associate Justices of the Supreme Court  
610 Federal Plaza - 5th Floor  
Central Islip, New York 11722

*Mary Elizabeth Delli-Pizzi*  
MARY ELIZABETH DELLI-PIZZI  
Assistant U.S. Attorney  
(Of Counsel)

11/28/01 MON 15:56 FAX 2022081903

NARA-NWDT-I

013

TABLE OF AUTHORITIES CITED

CASES

See Appellant Brief: Appendix C.

See also People's Brief: Appendix D.

STATUTES AND RULES

Appendix C.

Appendix D.

EXTRA PAGE. 002

12

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PAGE.10

Supreme Court of the United States

No. 98-9916

Thurman Brown,

Petitioner

v.

New York

ON PETITION FOR WRIT OF CERTIORARI to the Appellate Division, Supreme Court of New York, Second Judicial Department, No. 97-11757.

ON CONSIDERATION of the petition for a writ of certiorari herein to the Appellate Division, Supreme Court of New York, Second Judicial Department.

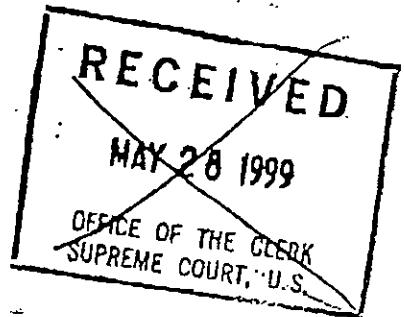
IT IS ORDERED by this Court that the said petition be, and the same is hereby, denied.

October 4, 1999

A true copy WILLIAM K. SUTER  
Test:  
Clerk of the Supreme Court of the United States  
By \_\_\_\_\_ Deputy

No.

98-9916



IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.

1999

1999

OFFICE OF THE CLERK

Thurman Jerome Brown PETITIONER  
(Your Name) Pro se

VS.  
The People of State  
of New York — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

(1) Nassau County Supreme Court

(2) The Supreme Court, Appellate Division  
Second Judicial Department

Petitioner has not previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Thurman J. Brown  
(Signature)

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
none	\$ 0	\$ N/A
none	\$ 0	\$ N/A
none	\$ 0	\$ N/A

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
none	N/A	0
none	N/A	0
none	N/A	0

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ none	\$ N/A
Are real estate taxes included? <input type="checkbox"/> yes <input type="checkbox"/> no		
Is property insurance included? <input type="checkbox"/> yes <input type="checkbox"/> no		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ none	\$ N/A
Home maintenance (repairs and upkeep)	\$ none	\$ N/A
Food	\$ none	\$ N/A
Clothing	\$ none	\$ N/A
Laundry and dry-cleaning	\$ none	\$ N/A
Medical and dental expenses	\$ none	\$ N/A

Transportation (not including motor vehicle payments) \$ N/A \$ N/A

Recreation, entertainment, newspapers, magazines, etc. \$ N/A \$ N/A

Insurance (not deducted from wages or included in mortgage payments)

Homeowner's or renter's \$ N/A \$ N/A

Life \$ N/A \$ N/A

Health \$ N/A \$ N/A

Motor Vehicle \$ N/A \$ N/A

Other: \_\_\_\_\_ \$ N/A \$ N/A

Taxes (not deducted from wages or included in mortgage payments)  
(specify): N/A \$ N/A \$ N/A

Installment payments

Motor Vehicle \$ N/A \$ N/A

Credit card(s) \$ N/A \$ N/A

Department store(s) \$ N/A \$ N/A

Other: \_\_\_\_\_ \$ N/A \$ N/A

Alimony, maintenance, and support paid to others \$ N/A \$ N/A

Regular expenses for operation of business, profession,  
or farm (attach detailed statement) \$ N/A \$ N/A

Other (specify): \_\_\_\_\_ \$ N/A \$ N/A

Total monthly expenses: \$ N/A \$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

yes  no

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form?  yes  no

If yes, how much? 0

If yes, state the attorney's name, address, and telephone number:

NA

11. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

yes  no

If yes, how much? NA

If yes, state the person's name, address, and telephone number:

NA

12. Provide any other information that will help explain why you cannot pay the costs of this case.

The Petitioner has been incarcerated since

September 19, 1996

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 18, 19 99

A

Theresa Iruhalmi  
(Signature)

Theresa Iruhalmi  
THERESA IRUSHALMI  
Notary Public, State of New York  
5/8/99

Qualified in Dutchess Co. No. D11R5018852  
Commission Expires November 1, 1999

Q3-0916

No. - \_\_\_\_\_

California Coast, U.S.

P. L. B. 13

1925-1926

IN THE  
SUPREME COURT OF THE UNITED STATES

20200 OF 102 6120

Thurman Jerome Brown - PETITIONER (Pro Se)

VS.

The People of the State of New York - RESPONDENTS

ON A PETITION FOR A WRIT OF CERTIORARI TO

The New York State Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Thurman Jerome Brown #98A2656

354 Hunter Street, Sing-Sing C.F.

Ossining, NY 10562

(516)483-9459 home FF

Seven Questions Presented

- 1- Was petitioner improperly permitted to represent himself at trial?
- 2- Did prosecutorial misconduct prevent petitioner from receiving a fair trial?
- 3- Were defendants alleged statements to police coerced and involuntary?
- 4- Did trial court improperly deny petitioners motion for a trial order of dismissal?
- 5- Was petitioner's waiver of immunity before the Grand Jury effective in respects to count #8 of the indictment?
- 6- Are several counts of the indictment multiplicitous?
- 7- Was petitioner improperly sentenced on count #2 of the indictment.

See applicants brief attached as Appendix C.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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JURISDICTION.....	2
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## INDEX TO THE APPENDICES

APPENDIX A- The New York State Court of Appeals Decision,  
dated April 14, 1999.

APPENDIX B- The Supreme Court of the State of New York  
Appellate Division, Second Dept., decision dated 2/22/99.

APPENDIX C - Defendants Brief.

APPENDIX D - Respondent's Brief.

APPENDIX E - Detective Re's portion of minutes(R40-57) from  
page 61-78.

APPENDIX F- Duplication of Det. Re's portion of  
minutes(R64-81).

APPENDIX G - Assistant District Attorney Shaun K. Hogan's  
Affirmation, dated April 21, 1997.

APPENDIX H - A.D.A. Hogan's handwritten Rosario Index.

APPENDIX I - The Court's Legal Sufficiency ruling.

APPENDIX J - Baldwin Herald, September 25, 1999.

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals is not available.

The opinion of the United States district court is not available.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the State Supreme Court, Appellate Division appears at Appendix B to the petition and is unpublished.

(1)

## JURISDICTION

### For cases from federal courts:

The United States Court of Appeals has not reviewed this case.

### For cases from state courts:

The date on which the highest state court decided my case was April 14, 1999. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: April 14, 1999, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to including( dates not available, application not available).

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

STATEMENT OF CASE

On December 10, 1996 Petitioner appeared before the Honorable Victor M. Ort, Nassau County Supreme Court and expressed on the record that there is strong evidence that the State sponsored perjury which occurred before the September 24, 1996 Grand Jury hearing Defendants trial court the People's 710.30 Notice of Intent (Appendix H). The People gave notice of an alleged "oral statement" of defendant (Appendix H: R23-27) and photo identification. However, attached thereto is also an alleged written "Statement of Admission" (R28-33). The People alleged defendant refused to sign, the People did not give notice of both statements which are not identical. The "Oral statement of Defendant" (R23-27) was written by A.D.A. Marino five days after defendant's arrest and it was rewritten as Statement of Admission (R28-33) soon thereafter when defendant was no longer in police custody.

At December 10, 1996 hearing, the Court removed counsel by counsel's own wishes because the D.A.'s Office and Civil Rights organizations had been in contact with then counsel, Brian Carmody. Defendant was represented by the legal Aid Society prior to Brian Carmody. Legal Aid assigned Nancy Garber, who in turn waived defendant's right, without his consent, to appear before the Grand Jury hearing Ind. #96746 for Attempted Robbery in the Third Degree. Ms. Garber refused to confront the D.A.'s Office with the evidence of perjury and lied to defendant about the meaning of such situation. A full account is recorded on November 21, 1996 minutes before Hon. Victor M. Ort.

Martin I. Silberg was assigned to represent petitioner at the December 10, 1996 hearing by the Court to "address defendant's allegations." Mr. Silberg arrived at the County Jail to interview defendant. The statements and their meaning was discussed. Mr. Silberg informed the defendant

that A.D.A. Marino "slipped" by attaching other statement and asked defendant what his position was to convey to the D.A.'s Office. Besides the statements defendant showed Mr. Silberg a sketch of the assailant in the Cohen's August 19, 1996 incident(R22) and told Mr. Silberg to convey to the D.A.'s Office that they release defendant and no further action would be taken.

Mr. Silberg left defendant at Nassau County Jail and gave consent to issuance of a line-up order by the Court. Mr. Silberg was not authorized to jeopardize defendant in that way. Mr. Silberg operating in the belief that defendant was guilty helped to manufacture identification evidence against him and intimidated defendant into a plea deal of 7 years.

How do A.D.A. Marino, the Police and Martin I. Silberg present at the February 13, 1997 line-up explain to victims that had a composite sketch of a clean-shaven assailant, that they wanted them to view a line-up of dark-skinned Black males, when defendant had a full beard at the time of the August 19, 1996 incident? How? Even the photopak has defendant with a beard. How?

Prior to February 13, 1996 line-up the defendant authored a letter of protest in regards to the line-up that was rigged. The Court with Victor M. Ort presiding set a hearing for February 19, 1997. In that letter and at that hearing the defendant first invoked his right to appear Pro Se. The hearing was contentious. Mr. Silberg protested the line-up was proper. Yet the defendant had a full beard and looked nothing like the original victim's identification sketch. Defendant is African-American and sketch is other. At that hearing the Court denied application with leave to appeal if another conversation with Mr. Silberg did not work. The defendant refused the invitation of the Court and again invoked that privilege.

The Court set another hearing for March 13, 1997 and questioned the defendant about alibis and

self-representation. Mr. Silberg was present and told the Court that he "thought" the defendant was "stalling" for time. The defendant protested Mr. Silberg's presence and told the Court it had no jurisdiction over the decision because defendant felt he was being "railroaded." Pre-trial hearings were set for March 31, 1997, Richard Wolstein was appointed Legal Advisor and Mr. Silberg was removed from the case.

Pursuant to a Writ of Habeus Corpus before the Hon. Donald P. DeRiggi the defendant was brought before the Court March 19, 1997 seeking an Isaacson Hearing (People vs. Isaacson, 44 N.Y.2d. 511, 406 N.Y.S. 714 pursuant to People vs. Pelchat, 62 N.Y. 2d. 97, 476, N.Y.S. 2d. 79, 464, N.E. 2d. 447) to address the allegation that the indictment was obtained due to State sponsored perjury because there exist two strikingly different versions of the same alleged statement. The impairment of the Grand Jury proceeding was called into question. Enclosed in Appendix I is the Court's observation with respects to statements and impairment of the Grand Jury proceedings. The Grand Jury minutes were counterfeited thereafter.

The official Rosario Index was compiled, scrutinized and arranged by A.D.A. Shaun K. Hogan (R1-83). Contained therein are what appears to be bogus, out-of-sequence (61-78, 213-230), and counterfeit copies of Detective Carl Re's Grand Jury testimony (R40-57, R64-81, 18 pages 61-78, and 18 pages 213-230). the original minutes have been eliminated. A.D.A. Shaun K. Hogan's handwritten, detailed description of the Rosario materials are arranged therein (SEE Appendix E & F).

A.D.A. Hogan created sets of this Rosario Hearing (minutes page 92); and the Court was even "sure" that the defendant perused Det. Re's minutes (hearing minutes page 92) because defendant was supposed to be intimidated into accepting a plea offer.

The Hon. Victor M. Ort conspired with the D.A.'s Office to perpetrate a fraud on the defendant because the April, 7

1997 record demonstrates the Court's complicity by virtue of the circumstances in which the Hon. Victor M. Ort, Mr. Richard Wolstein, Legal Advisor (who by the way had the same Rosario index as the defendant but chose to remain silent and entered no protest), and A.D.A. Hogan were all "listening officers of the Court" when the defendant expressed in some detail, that the A.D.A. had in fact furnished the defendant with counterfeit portions of Detective Re's Grand Jury testimony. The Court record reflects that the Hon. Victor M. Ort, Mr. Wolstein and A.D.A. Hogan heard the defendants objections yet chose to ignore these legitimate concerns and change the subject. This implies a complicity to fraud on the part of the Court. (p.408-413)

At the very end of four days of pre-trial hearings the defendant again raised the subject of the false Grand Jury minutes. The Court finally acknowledged this was true (minutes p. 538-544). Legal Advisor Richard Wolstein fled at this point.

A.D.A. Hogan opposed defendant's Oral Motion to dismiss in moving papers dated April 21, 1997, "Affirmation" and in essence asserts that Court Reporter Margaret O'Shea "confirms" Det. Carl Re's portion of the minutes had been "inadvertently" reprinted, not retyped, at the trial. Margaret O'Shea recants the A.D.A.'s prior position and admits she did not know what happened to Det. Re's portion of the minutes. (SEE Appendix G)

A.D.A. Hogan also asserts that he had a conversation with the Grand Jury that issued indictment no. 96469. R.D. Glen and Associates manufactured defendant's Grand Jury minutes. Under such unusual circumstances the Grand Jury process is no longer secret. From jurors to R.D. Glen and Associates all involved are subject to testify. The A.D.A.'s Affirmation is binding.

Additional evidence of tampering with Detective Re's portion is as follows:

Transcripts are not "identical." They were re-typed.

page 63 lines 7,25---p.215 lines 7,25

page 64 lines 10,12,13,15---p.216 lines 10,12,13,15

page 65 lines 2,6,7,13---p.217 lines 2,6,7,13

page 66 line 24---p.218 line 24

page 68 line 13,14---p.220 lines 13,14

page 74 line 9---p.226 line 9

page 76 line 23---p.228 line 23

The exact number of pages of Grand Jury minutes defendant received from the People begins at page 2 continues through page 168 and then includes pages 213-230. The People list sixteen witnesses at trial and 168 pages of Grand Jury testimony if the Court of May 27, 1997 conclusion of law(page 6) is allowed to reduce testimony in terms of R40-63(pp.213-230) is being suppressed by Court's erroneous conclusion.

A.D.A. Hogan arranged the Rosario Index. His incriminating markings are at the right-hand lower corner of each page that designates the arrangement of the Rosario Index. A.D.A. Hogan even prepares a handwritten cover sheet explaining the Rosario Index and it's materials. A.D.A. Hogan even has the boldness to describe the composite sketch as the defendant. Suffice to say, the handwriting proves the intent(See Appendix H).

The defendant's September 24, 1996 Grand Jury minutes were certified by Chief Court Reporter Margaret O'Shea between the appearance at trial Court's inspection of the minutes and the legal sufficiency ruling entered February 24, 1997(See Appendix I).

Chief Court Reporter Margaret O'Shea handled the ribbon and stenography. R.D. Glen and Associates manufactured the Grand Jury minutes of indictment no. 96469.

A.D.A.s Ronald T. Marino and Shaun K. Hogan handle the transcripts. Judge Victor M. Ort inspected the minutes handed over by A.D.A. Hogan between January 9, 1997 and the Court legal sufficiency ruling entered February 24, 1997.

The transcripts that are a representation of Indictment no. 96469 are no longer certifiable in terms of their accuracy because a portion of the lead detective, Carl Re, has been eliminated and replaced by a counterfeit, out-of-sequence duplicate(p.61-78, 213-230) to avoid 710.30 sanction and to erase State sponsored perjury. Elimination of original minutes between R40-57, R64-81, some 36 pages of Grand Jury transcripts raises the specter that a whole new set of transcripts up until the defendant's testimony was fabricated because complainant Claire Roman testified on cross-examination that she never gave formal testimony other than the day she testified at trial, yet there are Grand Jury minutes which contain her name.

The People refused to turn over as per CPL§240.00 the Identification Process Robin Cohen underwent when she identified Ray Braxton as her assailant prior to the Photopak identification of the defendant. This procedure took place on September 2, 1996 with respects to the police interview of Ray Braxton(R-167) later.

The People also refused to turn over pursuant to CPL§240.44 before trial the notes or a tape of Dept. Sketch Artist, Det. Marklin (R-230) made during the interview with the complainant Robin Cohen where a sketch was made of her assailant was compiled on the victim's best memory August 21, 1996, just two days after the incident. At trial the People would not release this material. A.D.A. Hogan represented Det. Marklin's position (R-230).

The August 19, 1996 original "Dealer's Record of Purchase" receipt in the Peoples possession has had incriminating information planted in it after Det. Carl Re handled it because at trial during cross-examination Behrouz Oheb, the gift shop/jewelry store owner who defendant sold jewelry to on that date, told the jury he never told the police he had ever bought a diamond ring from the defendant. This Court needs to view the original document (R-109). This "Dealer's Record of Purchase" outlines four

items, two rings and two other pieces sold to the gift shop owner at 98 Main St. in Hempstead, N.Y. which coincides with the date of Robin Cohen's incident August 19, 1996.

In Robin Cohen's description of her ring in the complainant's supporting disposition(R101-102), she describes the ring as silver(not gold or platinum) with three diamonds. The original "Dealer's Record of Purchase" outlines the items Thurman Brown sold to Behrouz Oheb on August 19, 1996:

- 1- 10k man's ring
- 2- 10k 1930 man's ring
- 3- 14k white gold with blue stone
- 4- 14k white gold with 3 diamonds, 2 of 40 point, 1 of  $\frac{1}{2}$  carat.

On cross-examination Det. Carl Re conceded that the reason the ink was of a different color on item No. 4 as it describes a ring "with 3 diamonds" was because the store owner rewrote it. This description of a ring with 3 diamonds on it was not there when the defendant did legitimate business with Behrouz Oheb. Det. Carl Re secured this document September 17, 1996 some 28 days after the defendant's transaction. Behrouz Oheb gave sworn testimony that the defendant never sold him a diamond ring.

The 911 tape of Robin Cohen from August 19,1996 has also been tampered with. The recording that was played at trial has "I've been burglarized" as Ms. Cohen's first words and "Where's he at? In the garage?" as the operator's response. During cross-examination the defense asked Ms. Cohen the operator knew she had just come home from shopping in the village and had parked her car in the underground garage as she never seems to have put that information forward. Her response was "They know the area."

Also on Cohen's tape she describes to the operator how the assailant left her home out the back door, went across the roof and down the stairs across the parking lot in a northern direction. How could the victim have seen all that

she describes if she testified that she was put in the bathtub by the assailant and made to face the wall. The bathroom window faces a brick wall(R197). The tape was redone by the complainant.

The 911 tape of Marylo Keane August 21, 1996 has also been tampered with. On the Keane tape the victim states that her assailant left out the back door of her employment and ran around the corner of the building, continuing to run northbound a quarter of a mile to Stowe Ave. Because Ms. Keane is a full-sized woman and testified that her assailant pushed her to the floor, how could she have seen which direction the assailant went from the floor through the closed back door of a brick building? Her response was to hang her head in shame(see 911 card with Grand and Stowe Ave. descriptions, R99-200).

The evidence produced at trial is summarized as being fraudulent. The People were allowed to charge their facts. Justice has changed for the worst again. Defense Attorney Martin I. Silberg orchestrated and aided the prosecution to manufacture false evidence by consenting to a line-up issuance when there was a suggestive Photopak without the defendant's knowledge or consent, and under circumstances where the complainant and her son had a sketch made of an assailant who is virtually clean-shaven when the defendant has and had a beard and in no way resembles the sketch either before nor at the line-up(R22).

The defendant also produced at trial a "Crime Stopper" article from the Baldwin Herald stating "Tips Nails Alleged Criminal" published September 25, 1996 one day after Grand Jury proceedings. The news article features the sketch of Conan's suspect but it has the defendant's name, age and address underneath the image as if the composite sketch was indeed Thurman Jerome Brown.

## REASONS FOR GRANTING THE PETITION

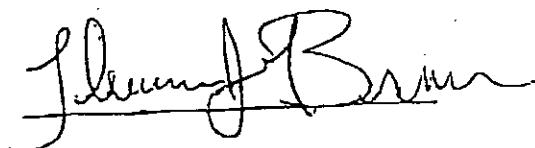
- 1- To establish whether or not a defendant subjected to petitioner's awful predicament is still afforded protections under the United States Constitution when he or she is forced to act Pro Se where legitimate protest exists about fabricating evidence, judicial corruption and attorney abandonment.
- 2- To establish when prosecutorial malfeasance interferes with the defendant's right to equal protection under the law, due process and a right to a fair and impartial trial, especially when defendant is not trained in the science of law and unsophisticated and invoked the privilege to act Pro Se to show the corruption and intimidation.
- 3- This hand-me-down standard of official mob justice must be forced out into the light and examined because there is a pattern of this brand of justice in the State of New York and the country in general. In 1857 a slave named Dred Scott asked this Court were there any rights a Blackman had that Whites are bound to respect? Some one hundred and forty-two years later the free offspring of America's enslaved Africans puts that question once more to this Court at the eve of the 21st century: does that mean defendant has no rights whites are bound to respect?

(5)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Thurman Jerome Brown

Date: May 17, 1999

# State of New York

## Court of Appeals

BEFORE: HON. JOSEPH W. BELLACOSA

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

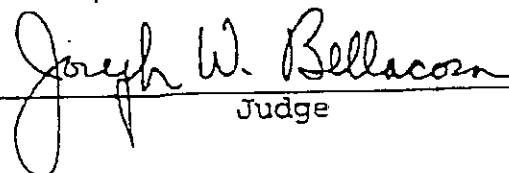
THURMAN BROWN,

Appellant

CERTIFICATE  
DENYING  
LEAVE

I, JOSEPH W. BELLACOSA, Judge of the Court of Appeals of the State of New York, certify that, upon application timely made by the above-named appellant for a certificate pursuant to CPL 460.20 and upon the record and proceedings herein,\* no question of law is presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at Albany, New York  
April 14, 1999

  
\_\_\_\_\_  
Joseph W. Bellacosa  
\_\_\_\_\_  
Judge

\*Description of Order:

Order of the Appellate Division, Second Department, entered February 22, 1999, affirming a judgment of the Supreme Court, Nassau County, rendered December 1, 1997.

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT5275D  
C/hu

AD2d

Submitted - January 12, 1999 ✓

DAVID S. RITTER, J.P.  
THOMAS R. SULLIVAN  
MYRIAM J. ALTMAN  
LEO F. McGINITY, JJ.

97-11757

The People, etc., respondent,  
v Thurman Brown, appellant.  
(Ind. No. 96469)

## DECISION &amp; ORDER

Mark Diamond, New York, N.Y., for appellant.

Denis Dillon, District Attorney, Mineola, N.Y. (John F. McGlynn and Margaret E. Mainusch of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Ort, J.), rendered December 1, 1997, convicting him of burglary in the second degree, robbery in the third degree, grand larceny in the fourth degree, criminal possession of stolen property in the third degree (two counts), criminal possession of stolen property in the fifth degree, and grand larceny in the third degree (two counts), upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress statements he made to the police.

ORDERED that the judgment is affirmed.

Contrary to the defendant's assertions on appeal, the Supreme Court did not err in denying his motion to suppress statements he made to the police (see, *People v Padilla*, 133 AD2d 353, 354; *People v Croney*, 121 AD2d 558). The defendant's argument that his statements were involuntary and coerced turns on issues of credibility that were resolved against him by the hearing court. The hearing court's resolution of such matters is accorded great deference and will not be disturbed on appeal unless they are clearly erroneous (see, *People v Prochilo*, 41 NY2d 759; *People v Williams*, 226 AD2d 752).

The defendant's remaining contentions are either unpreserved for appellate review, without merit, or do not warrant reversal.

RITTER, J.P., SULLIVAN, ALTMAN and McGINITY, JJ., concur.

ENTER:

Martin H. Brownstein  
Clerk

February 22, 1999

PEOPLE v BROWN, THURMAN

## Appendix H

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: June 27, 2002

90136

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THE PEOPLE OF THE STATE OF  
NEW YORK ex rel. THURMAN  
BROWN,

Appellant,

v

MEMORANDUM AND ORDER

THE PEOPLE OF THE STATE OF  
NEW YORK,

Respondent.

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Calendar Date: May 31, 2002

Before: Cardona, P.J., Crew III, Spain, Rose and Lahtinen, JJ.

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Thurman Brown, Stormville, appellant pro se.

Eliot Spitzer, Attorney General, Albany (Wayne L. Benjamin of counsel), for respondent.

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Lahtinen, J.

Appeal from a judgment of the Supreme Court (Feldstein, J.), entered June 27, 2001 in Clinton County, which denied petitioner's application for a writ of habeas corpus, in a proceeding pursuant to CPLR article 70, without a hearing.

Petitioner is incarcerated as a result of his conviction of a number of crimes in Supreme Court, Nassau County (see, People v. Brown, 258 AD2d 661, lv denied 93 NY2d 897, cert denied 528 US 860). Based upon claims that the trial court was deprived of jurisdiction over the criminal action as a result of fraud and/or other misconduct perpetrated by the prosecution, the court and

virtually every other person who was even remotely involved, petitioner filed an application for a writ of habeas corpus. Concluding that the verification of the petition required by CPLR 7002 (c) was lacking and that, in any event, the petition failed to state a claim that was appropriate for habeas corpus relief, Supreme Court denied the application for the writ. Petitioner appeals.

Assuming that the lack of verification could be ignored, we agree with Supreme Court that the petition failed to state a claim that is appropriate for habeas corpus relief. Petitioner's argument that Supreme Court misconstrued the nature of his claim is unavailing. According to petitioner, his incarceration as the result of a criminal action over which the trial court lost jurisdiction through fraud and/or other misconduct is a form of slavery in violation of the 13<sup>th</sup> Amendment. Thus, petitioner claims that habeas corpus is an appropriate remedy to release him from the bonds of this slavery. Petitioner's argument overlooks the express exception in the 13<sup>th</sup> Amendment for "punishment for crime whereof the party shall have been duly convicted". In this case, there is a judgment of conviction which, despite petitioner's claims to the contrary, is valid and will remain so unless and until it is reversed or vacated. Accordingly, petitioner currently has no 13<sup>th</sup> Amendment claim and his underlying claims of lack of jurisdiction, fraud and misconduct represent direct attacks on the validity of the judgment of conviction which could have been raised on petitioner's appeal from that judgment or by way of a postconviction motion (see, CPL 440.10 [1] [a], [b], [c]). Inasmuch as habeas corpus is not the proper remedy to raise issues that could have been raised on direct appeal or in a motion pursuant to CPL article 440 (see, e.g., People ex rel. Burr v Duncan, 289 AD2d 898, lv denied 97 NY2d 612), and in the absence of any circumstances which would warrant departure from these traditional orderly proceedings (see, e.g., People ex rel. Charles v De Angelo, 263 AD2d 796), Supreme Court properly denied petitioner's application.

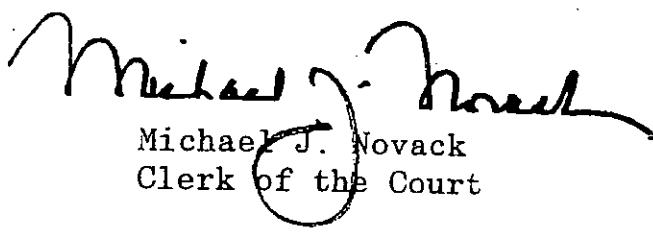
Cardona, P.J., Crew III, Spain and Rose, JJ., concur.

-3-

90136

ORDERED that the judgment is affirmed, without costs.

ENTER:



Michael J. Novack

Clerk of the Court

## Appendix A

UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

---

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3<sup>rd</sup> day of March, two thousand twenty-two.

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Thurman Jerome Brown,

Plaintiff-Appellant,

v.

The People of The State of New York, The County of Nassau, The Nassau County Unified Court System, The Nassau County Police Department, The Nassau County Sheriff's Department,

Defendants-Appellees.

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**ORDER**

Docket No: 21-1408

Appellant, Thurman Jerome Brown, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

*Catherine O'Hagan Wolfe*



## Appendix B

21-1408-cv

Brown, The People of the State of New York

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit, held  
2 at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New  
3 York, on the 26<sup>th</sup> day of January, two thousand twenty-two.

4  
5 PRESENT: PIERRE N. LEVAL,  
6 RAYMOND J. LOHIER, JR.,  
7 EUNICE C. LEE,  
8 *Circuit Judges.*

9  
10 THURMAN JEROME BROWN,

11  
12 *Plaintiff-Appellant,*

13  
14 v.

No. 21-1408-cv

15  
16 THE PEOPLE OF THE STATE OF NEW YORK, THE  
17 COUNTY OF NASSAU, THE NASSAU COUNTY  
18 UNIFIED COURT SYSTEM, THE NASSAU COUNTY  
19 POLICE DEPARTMENT, THE NASSAU COUNTY  
20 SHERIFF'S DEPARTMENT,

21  
22 *Defendants-Appellees.*

1 FOR PLAINTIFF-APPELLANT:

2 Thurman Jerome Brown, pro se,  
3  
4 New York, NY

5 FOR DEFENDANTS-APPELLEES

6 New York State and New York State  
7 Unified Court System:

8 Anisha S. Dasgupta, Deputy  
9 Solicitor General, *for Letitia*  
James, Attorney General, State of  
New York, New York, NY

10 FOR DEFENDANTS-APPELLEES

11 The County of Nassau, the Nassau County  
12 Police Department, and the Nassau County  
13 Sheriff's Department:

14 Robert F. Van der Waag, Deputy  
15 County Attorney, *for John B.*  
16 Chiara, Acting Nassau County  
17 Attorney, Mineola, NY

18  
19 Appeal from an order of the United States District Court for the Eastern

20 District of New York (Gary R. Brown, *Judge*).

21 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,

22 AND DECREED that the order of the District Court is AFFIRMED.

23 Thurman Jerome Brown, proceeding pro se, appeals from a May 24, 2021  
24 order of the District Court dismissing his suit under 42 U.S.C. § 1983 against  
25 New York State, the County of Nassau, the "Nassau County Unified Court  
26 System" (which we construe to be the New York State Unified Court System), the

1      Nassau County Police Department, and the Nassau County Sheriff's Department  
2      (together, "Defendants") in connection with his 1997 criminal conviction in New  
3      York for various theft offenses. On March 18, 2021, Defendants filed a letter  
4      asking the District Court to schedule a pre-motion conference, set a briefing  
5      schedule for a motion to dismiss, or issue an order dismissing the action in its  
6      entirety. The District Court construed the letter as a motion to dismiss and  
7      granted it. We assume the parties' familiarity with the underlying facts and the  
8      record of prior proceedings, to which we refer only as necessary to explain our  
9      decision to affirm.

10        "We review de novo a district court's dismissal of a complaint pursuant to  
11      Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations  
12      in the complaint as true, and drawing all reasonable inferences in the plaintiff's  
13      favor." Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002). A  
14      complaint must plead "enough facts to state a claim to relief that is plausible on  
15      its face." Green v. Dep't of Educ. of City of New York, 16 F.4th 1070, 1076-77 (2d  
16      Cir. 2021) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Where,

1 as here, we review pleadings and briefs submitted by pro se litigants, we  
2 "liberally construe" such submissions "to raise the strongest arguments they  
3 suggest." McLeod v. Jewish Guild for the Blind, 864 F.3d 154, 156 (2d Cir. 2017)  
4 (per curiam) (quotation marks omitted).

5 In dismissing Brown's suit, the District Court determined, among other  
6 things, that his claims were time-barred. We agree. "Although the statute of  
7 limitations is ordinarily an affirmative defense that must be raised in the answer,  
8 a statute of limitations defense may be decided on a Rule 12(b)(6) motion if the  
9 defense appears on the face of the complaint." Ellul v. Congregation of Christian  
10 Bros., 774 F.3d 791, 798 n.12 (2d Cir. 2014). That is the case here. In his  
11 complaint, Brown alleges that Defendants violated his civil and constitutional  
12 rights under 42 U.S.C. § 1983. In New York, such claims are subject to a statute  
13 of limitations of three years. See Okure v. Owens, 816 F.2d 45, 47 (2d Cir. 1987).<sup>1</sup>

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<sup>1</sup> Among other claims, Brown alleges that he was falsely imprisoned, but it is not clear whether he intends to bring this cause of action under § 1983, see, e.g., Shain v. Ellison, 273 F.3d 56, 67 (2d Cir. 2001), or under state tort law. For the purposes of this order, and construing Brown's complaint liberally, we assume he intended to allege false imprisonment under § 1983, which provides a three-year statute of limitations period rather than the one-year period under state tort law. See Okure, 816 F.2d at 48.

1 several federal lawsuits with similar claims more than a decade before initiating  
2 this action. See Brown v. Rehnquist, No. 00 Civ. 7182, 2002 WL 32394848  
3 (E.D.N.Y. May 1, 2002), aff'd sub nom. Brown v. Wolstein, 71 F. App'x 96 (2d Cir.  
4 2003); Brown v. Legal Aid Soc'y of Nassau Cnty., No. 08 Civ. 198, 2008 WL  
5 11411651 (E.D.N.Y. June 3, 2008), aff'd, 367 F. App'x 215 (2d Cir. 2010).

6 We therefore conclude that the District Court did not err when it  
7 dismissed Brown's claims as untimely. In addition, to the extent that Brown  
8 asked the District Court to have his 1997 state conviction vacated, the Rooker-  
9 Feldman doctrine barred that claim. That doctrine, which prevents district  
10 courts from "review[ing] the judgments of state courts," Teichmann v. New  
11 York, 769 F.3d 821, 826 (2d Cir. 2014), applies where the federal-court plaintiff (1)  
12 lost in state court, (2) complains of injuries caused by the state court judgment,  
13 (3) invites the federal court to review and reject that judgment, and (4) brings the  
14 federal action after the state court renders its judgment, Vossbrinck v. Accredited  
15 Home Lenders, Inc., 773 F.3d 423, 426 (2d Cir. 2014). Since all four requirements

1 were clearly satisfied here, Rooker-Feldman barred Brown's claim seeking to  
2 invalidate his 1997 state conviction.

3 On appeal, Brown also maintains that the District Court abused its  
4 discretion when it construed Defendants' pre-motion letter as a motion to  
5 dismiss. We conclude that the District Court acted within its discretion in doing  
6 so, especially since Defendants clearly laid out their grounds for dismissal.  
7 Brown further suggests that the District Court unlawfully withheld a report and  
8 recommendation from the Magistrate Judge, but that argument finds no support  
9 in the record, which shows that the District Court dismissed the case before any  
10 report was filed.

11 We have considered Brown's remaining arguments and conclude that they  
12 are without merit. For the foregoing reasons, the order of the District Court is  
13 AFFIRMED.

14 FOR THE COURT:  
15 Catherine O'Hagan Wolfe, Clerk of Court  
16


A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit