SUPREME COURT
COUNTY OF ONONDAGA STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

vs.

JIMA BROWN,

Defendant.

NOTICE OF ENTRY

Indictment No. 2019-0519-1
Index No. 19-5858

SIR:

PLEASE TAKE NOTICE of a Decision/Order, of which the within is a copy, duly entered in the Onondaga County Clerk's Office on the 25th day of May, 2022.

DATED: May 27, 2022
Syracuse, New York

WILLIAM J. FITZPATRICK, ESQ.
District Attorney of Onondaga County
Criminal Courthouse, 4th Floor
505 South State Street
Syracuse, NY 13202
Tel: (315) 435-2470

TO: Jima Brown
DIN #21-B-1621
Five Points Correctional Facility
P.O. 119
Romulus, NY 14541

Appendix A

STATE OF NEW YORK
COUNTY OF ONONDAGA

PART III
SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK,

Indict #2019-0519-1
Index # 19-5858

-vs-

JIMA BROWN,

Defendant.

CUFFY, Gordon J., Presiding

DECISION/ORDER

On June 17, 2021, defendant was convicted by a jury of first degree rape. The charges stemmed from an incident on June 7, 2008 in which defendant followed the victim, grabbed her by the neck, threatened to kill her, pushed her onto her stomach and forcibly raped her. The victim underwent a sexual assault examination that included collection of DNA samples. In 2018, defendant was in Florida working as a Lyft driver ad was accused of raping a passenger. Defendant acknowledged he was the Lyft driver in question but claimed the victim consented to sexual intercourse. The victim was highly intoxicated and could not recall the incident in detail or remember if she consented. Florida authorities obtained a warrant for defendant's DNA but testing proved inconclusive. The Florida case was then closed. Both the 2008 and 2018 DNA samples were entered in a national DNA database. In December 2018, the Onondaga County Center for Forensic Sciences was alerted that an "association" was established between defendant's DNA sample acquired in Florida and the 2008 sample collected from the Syracuse victim. Defendant was arrested and charged in the 2008 Syracuse case.

On September 22, 2021, defendant was sentenced to a determinate term of 20 years in prison followed by 5 years postrelease supervision. He fled a notice of appeal on October 4, 2021, but has not yet perfected the appeal.[1]

Defendant now moves pursuant to Criminal Procedure Law ("CPL") 440.10 for an order vacating his conviction, arguing: the Florida statutory scheme that permitted authorities to seize his DNA and enter it into a database was unconstitutional; his DNA was improperly collected by an investigator instead of a medical professional; and trial counsel was ineffective for failing to investigate the collection and use of his DNA and for failing to properly prosecute his appeal. The People filed an Answering Affirmation, and defendant filed reply papers.[2] For the reasons that follow, defendant's motion is **DENIED**.

Post-judgment proceedings, including CPL 440.10 motions, are considered an emergency measure to provide a defendant with a remedy where no other judicial relief is available (*People v. Donovan*, 107 AD2d 433, 443 [2d Dept 1985], *lv denied* 65 NY2d 694 [1985]). The purpose of a CPL 440.10 motion is to inform the court of facts not reflected in the record and not known at the time of the judgment that would, as a matter of law, undermine a defendant's conviction. It cannot

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[1] On January 13, 2022, the Appellate Division, Fourth Department assigned the Hiscock Legal Aid Society to represent defendant on appeal. On February 10, 2022, after receiving defendant's pro se motion, the court contacted appellate counsel to inquire as to whether counsel would adopt or withdraw the motion. On March 23, 2022, counsel informed the court he would not be joining in the motion.

[2] The court received two sets of reply papers, dated May 5, 2022 and May 6, 2022. Defendant explained in a letter attached to his May 6, 2022 papers that he forgot to sign the first set of reply papers. The two sets of papers raise substantially the same issues and information and have been considered together as one submission.

be used as a substitute for direct appeal, or as a second bite at a direct appeal (*People v. Bruno*, 97 AD3d 986, 986 [3d Dept 2012], *lv denied* 20 NY3d 931 [2012]; *People v. Harris*, 109 AD2d 351 [2d Dept 1985], *lv denied* 66 NY2d 919 [1985]).

Defendant's claims related to the Florida statute under which his DNA was collected in 2018, including his argument that his DNA was seized in violation of his constitutional rights, were raised by counsel before the court in a September 14, 2021 motion to adjourn sentencing. These claims were then argued by both defendant and counsel at sentencing. The court rejected the claims, finding defendant's DNA was properly obtained under Florida law, noting that New York does not "legislate for the State of Florida," and finding that the procedures done within New York were in compliance with New York law (*see* Transcript, 9/22/21, 10-12).[3] This record-based claim should be raised on direct appeal (CPL 440.10[2][b]). Defendant may also raise his claim that his DNA was improperly taken by an investigator instead of a medical professional on direct appeal (CPL 440.10[2][b]).

Defendant's claim that counsel was ineffective for failing to investigate the collection and use of his DNA, or to move to suppress DNA evidence, is patently without merit. Under both the State and Federal Constitutions, defendants have the right to effective assistance of counsel (*see* U.S. Const. 6th Amend.; N.Y. Const., art. 1, § 6; *People v. Hernandez*, 22 NY3d 972, 974 [2013]; *People v. Baldi*, 54 NY2d 137, 146 [1981]). The New York standard of meaningful representation does not

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[3] Defendant's own exhibits, including the excerpts of Florida law, support the court's conclusion that the taking, retention and entering of defendant's DNA into a database were proper under Florida law.

require a defendant to demonstrate that counsel's deficient performance prejudiced the defendant (*People v. Caban*, 5 NY3d 143 [2005]). The inquiry under New York law is whether the defendant received "meaningful representation" (*People v. Turner*, 5 NY3d 476, 480 [2005]; *Baldi*, 54 NY2d at 146-47). As long as "the evidence, the law and the circumstances of a particular case, viewed in totality, and at the time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement will have been met . . ." (*Baldi,* 54 NY2d at 146-47).

The record demonstrates counsel investigated defendant's DNA related claims and included them in a written motion, along with several exhibits, in an attempt to set aside defendant's conviction. And, as noted, counsel argued the point at sentencing. The court rejected the argument, finding defendant's DNA was properly collected, retained and entered into a database in Florida and that the procedures conducted in New York related to his DNA complied with New York law. Had counsel moved to suppress the DNA evidence on the grounds now advanced by defendant, that motion would have had little to no chance of success (*People v. Caban*, 5 NY3d 143, 152 [2005]; *People v. Stultz*, 2 NY3d 277, 284 [2004]). Counsel cannot be deemed ineffective for failing to make such a motion (*Caban*, 5 NY3d at 152).

Finally, to the extent defendant claims counsel did not properly prosecute his appeal, that claim is also without merit. There is nothing to support defendant's contention that trial counsel was ineffective with respect to his appeal, upon which trial counsel does not represent him (CPL 440.30[4][a], [c], [d]). A notice of appeal was timely filed and the Appellate Division assigned counsel for purposes of appeal on January 13, 2022. Defendant may still perfect that appeal

In sum, defendant's motion is **DENIED** without the need for a hearing (*see, e.g., People v. Delorbe*, 35 NY3d 112, 121 [2020] [ruling a "court may deny a CPL 440.10 motion without conducting a hearing if the moving papers do not contain sworn allegations substantiating or tending to substantiate all the essential facts."]).

This decision shall constitute the order of the Court.

Dated: 5/25/22

HON. GORDON J. CUFFY
Acting Supreme Court Justice

NOTICE AS TO FURTHER APPEAL

Pursuant to Section 460.15 of the Criminal Procedure Law, the defendant has the right to apply for a certificate granting leave to appeal to an intermediate appellate court. An application for such a certificate must be made in the manner set forth in the rules of the appellate division of this department (*see 22 §NYCRR 1000.13[o]*).

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

KA 22-01347

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

JIMA BROWN, DEFENDANT.

Indictment No.: 2019-0519-1

Defendant having moved for a certificate granting leave to appeal pursuant to CPL 460.15 from an order of the Supreme Court, Onondaga County, entered May 25, 2022,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is denied.

DATED: November 29, 2022

Hon. Joanne M. Winslow
Associate Justice

Appendix B

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 21-01445

PRESENT: SMITH, J.P., BANNISTER, GREENWOOD, NOWAK, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

JIMA BROWN, DEFENDANT-APPELLANT.

CERIO LAW OFFICES, PLLC, SYRACUSE, FRANK H. HISCOCK LEGAL AID SOCIETY (NATHANIEL V. RILEY OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRADLEY W. OASTLER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Gordon J. Cuffy, A.J.), rendered September 22, 2021. The judgment convicted defendant upon a jury verdict of rape in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of rape in the first degree (Penal Law § 130.35 [1]). Defendant contends that the People's original certificate of compliance, filed in January 2020, was illusory because the People had not disclosed disciplinary records for each law enforcement official the People intended to call as a trial witness, and County Court therefore should have granted his motion seeking to vacate that certificate of compliance. We reject that contention. CPL article 245 requires the People to automatically disclose to defendant "all items and information that relate to the subject matter of the case" that are in the People's "possession, custody or control" (CPL 245.20 [1]; *see People v Johnson*, 218 AD3d 1347, 1350 [4th Dept 2023]). That includes evidence that tends to "impeach the credibility of a testifying prosecution witness" (CPL 245.20 [1] [k] [iv]). At the time the People filed their original certificate of compliance, the disciplinary records of the law enforcement officials were shielded from disclosure by former Civil Rights Law § 50-a (*see generally Matter of New York Civ. Liberties Union v New York City Police Dept.*, 32 NY3d 556, 563-566 [2018]). To the extent that certain disciplinary records were disclosed by the People after the repeal of former Civil Rights Law § 50-a, such disclosures did not render the original certificate of compliance illusory. Contrary to defendant's further contention, we conclude that the supplemental certificate of compliance filed in June 2021, after the repeal of former Civil Rights Law § 50-a, did not invalidate the original certificate of compliance

Appendix C

inasmuch as defendant failed to establish a lack of good faith or due diligence by the prosecution (*see* CPL 245.50 [1], [1-a]).

Defendant failed to preserve for our review his contention that he was denied a fair trial when portions of a video were shown to the jury depicting him in handcuffs and shackles during police interrogation (*see generally People v Bradford*, 40 NY3d 938, 939 [2023], *rearg denied* 40 NY3d 974 [2023]; *People v German*, 145 AD3d 1550, 1551 [4th Dept 2016], *lv denied* 28 NY3d 1184 [2017]). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [a]).

We further conclude that, viewing the evidence in light of the elements of the crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]).

The sentence is not unduly harsh or severe. We have considered defendant's remaining contentions and conclude that none warrants reversal or modification of the judgment.

Entered: December 22, 2023

Ann Dillon Flynn
Clerk of the Court

State of New York
Court of Appeals

BEFORE: HON. ANTHONY CANNATARO, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ORDER DENYING LEAVE

JIMA BROWN,

Appellant.

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: 4/30/2024

Anthony Cannataro, Associate Judge

*Description of Order: Order of the Appellate Division, Fourth Department, entered December 22, 2023, affirming a judgment of the Onondaga County Court, rendered September 22, 2021.

Appendix D