

State of New York Court of Appeals

BEFORE: HON. MICHAEL J. GARCIA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ROBERT LARGO,

Appellant.

**ORDER
DISMISSING
LEAVE**

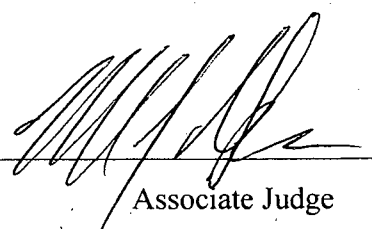
Ind. No. 291/97

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

UPON the papers filed and due deliberation, it is

ORDERED that the application is dismissed because the order sought to be appealed from is not appealable under CPL 450.90 (1).

Dated: November 26, 2018



Associate Judge

*Description of Order: Order of a Justice of the Appellate Division, Second Department, dated March 26, 2018, denying leave to appeal to the Appellate Division from an order of Supreme Court, Queens County, dated December 20, 2017.

Supreme Court of the State of New York
Appellate Division : Second Judicial Department

M247983
AFA/

JOSEPH J. MALTESE, J.

2018-01929

DECISION & ORDER ON APPLICATION

The People, etc., plaintiff,
v Robert Largo, defendant.

(Ind. No. 291/97)

Application by the defendant pursuant to CPL 450.15 and 460.15 for a certificate granting leave to appeal to this Court from an order of the Supreme Court, Queens County, dated December 20, 2017, which has been referred to me for determination.

Upon the papers filed in support of the application and the papers filed in opposition thereto, it is

ORDERED that the application is denied.



JOSEPH J. MALTESE
Associate Justice

March 26, 2018

PEOPLE v LARGO, ROBERT

SIR:

Please take notice that the within
is a true copy of a Notice of Entry
entered in the office of the Clerk
on the 20th of December, 2017
Dated, December 28, 2017

SUPREME COURT OF
THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL
TERM: PART: K-18

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

ROBERT LARGO,

Defendant,

TO Robert Largo

Defendant Pro Se

ORDER WITH NOTICE OF ENTRY

RICHARD A. BROWN
District Attorney
Queens County
125-01 Queens Boulevard
Kew Gardens, NY 11415

Brodt
Castellano

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM, PART K-18

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

against

By: GERALD, J.

Dated: December 20, 2017

Indictment No.: 00291/97

ROBERT LARGO

Defendant.

-----X

By notice of motion, supporting affidavit and memorandum of law of the defendant, *pro se*, dated March 8, 2017, defendant moves pursuant to CPL §440.20 for an order setting aside the sentence imposed upon him on April 26, 1999, on the ground that his sentence was illegally imposed. Defendant claims that he was erroneously adjudicated as a persistent violent felony offender and received an unauthorized, illegal, and invalid sentence.

The People submit the affirmation of Sharon Y. Brodt, Esq. and John M. Castellano, Esq., dated October 20, 2017, in opposition to the relief sought by the defendant.

BACKGROUND

On March 25, 1999, after a jury trial, Defendant was convicted of Rape in the First Degree, Burglary in the First Degree, Robbery in the Second Degree, Sex Abuse in the First Degree, and Criminal Possession of a Weapon in the Fourth Degree.

On April 26, 1999, Defendant was adjudicated as a persistent violent felony offender and was sentenced to an aggregate prison term of forty-five years (45) to life.

Defendant appealed his judgment of conviction and raised issues pertaining to the length of sentence and the pre-trial hearing decision which denied suppression of identification testimony. Defendant's conviction was affirmed by the Appellate Division, Second Department

in an order dated April 9, 2001. *See People v. Largo*, 282 A.D. 2d 548 (2001). Defendant sought leave to appeal. The Court of Appeals denied Defendant's application on July 2, 2001. *See People v. Largo*, 96 N.Y. 2d 903 (2001).

On October 2, 2001, Defendant filed a *pro se* motion to vacate his judgment of conviction pursuant to CPL 440.10[1][h]. In his motion, Defendant claimed that the identification procedure was suggestive, and that the complainant gave false testimony in the Grand Jury. Defendant further claimed that he received ineffective assistance of counsel. On May 23, 2002, Defendant's 440 motion was denied without a hearing pursuant to CPL 440.10[2][c] because all of Defendant's claims were on the record claims which could have been raised on appeal. Defendant sought leave to appeal the decision on his 440.10 motion. The Appellate Division, Second Department denied Defendant's application for leave to appeal.

On July 19, 2002, Defendant moved for a *writ of error coram nobis* on the ground of ineffective assistance of appellate counsel based upon appellate counsel's failure to raise the same claims that defendant raised in his first CPL 440.10 post-judgment motion. On November 12, 2002, the Appellate Division, Second Department denied defendant's motion for *writ of error coram nobis* on that ground that defendant failed to establish that he was denied effective assistance of appellate counsel. *See People v. Largo*, 299 A.D. 2d 425 (2d Dept 2002).

On January 20, 2003, Defendant filed a *writ of habeas corpus* in the United States District Court for the Eastern District. On March 4, 2004, the District Court denied Defendant's petition on the ground that all claims were meritless and were fully litigated at the state level. The District Court also denied issuance of a Certificate of Appealability. *See Largo v. Griener*, 2004 U.S. Dist LEXIS 5616 (2004).

On or about March 25, 2008, Defendant filed a second motion pursuant to CPL 440.10 to

of life imprisonment for class B and class C felony convictions (PL §70.08 [2] and PL §70.08 [3]). The Penal Law further provided that, for a class B felony, the minimum sentence to be imposed was ten (10) to twenty-five (25) years imprisonment. PL §70.08 (3) provided that, for a class C felony, the minimum sentence to be imposed was to eight (8) to twenty (20) years imprisonment. The court may also direct at the time of sentence, whether multiple terms of imprisonment shall run concurrently or consecutively. PL §70.25[1]. Clearly, defendant's sentence of imprisonment from forty-five (45) years to life was legally imposed.

A defendant must controvert the allegations contained in the predicate statement prior to sentencing. Failure to controvert the allegations, or to challenge the constitutionality of the conviction, constitutes a waiver of such a challenge. CPL 400.21[3]; CPL 400.21[7][b]. A predicate felony finding is deemed to be binding upon any future proceedings. CPL §400.21[8].

Here, Defendant has waived the right to contest his adjudication as a persistent violent felony offender because he failed to make this claim in a timely manner. Further, Defendant has also failed to allege any facts to support his claim that his previously adjudicated attempted burglary conviction was unconstitutionally obtained. Such factual allegations are required to overcome the presumption of regularity accorded to prior court proceedings. *See People v. Tocci*, 52 A.D. 3d 541 (2d Dept. 2008).

Even if this Court were to reach the merits of Defendant's claim regarding the constitutionality of his attempted burglary conviction, Defendant's papers are devoid of any proof that the statute governing violent felonies is unconstitutional. Defendant's contention that his sentence was unauthorized, illegally imposed, or otherwise invalid as a matter of law is without merit.

Accordingly, defendant's motion for an order setting aside the imposed sentence is denied.

All applications not addressed herein are denied. This is the Decision and Order of the Court and resolves the issues raised in the present motion.


LENORA GERALD, A.J.S.C

**Additional material
from this filing is
available in the
Clerk's Office.**