

Short Form Order

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

P R E S E N T: Hon. Sheri S. Roman,
Justice

THE PEOPLE OF THE STATE OF NEW YORK:	Ind. No.:	291/97
	:	
-against-	:	
	:	Motion: <u>To Furnish</u>
	:	<u>Stenographic Minutes</u>
ROBERT LARGO,	:	<u>as a Poor Person</u>
	:	
DEFENDANT	:	
	:	Submitted: Nov. 30, 2004

The following papers numbered
1 to 4 submitted in this motion:

Robert Largo, Pro Se
For the Motion

D.A.

Hon. Richard A. Brown,

By: William Milaccio, Esq.
Opposed

**Papers
Numbered**

Notice of Motion and Affidavits/Affirmations Annexed	1-2
Answering and Reply Affidavits/Affirmations.....	3-4

Upon the proceedings held in this matter, and in the opinion of the court herein, defendant's application for an order granting defendant poor person relief and permitting defendant to obtain a free transcript of the proceedings in this matter, is **denied**.

On April 26, 1999, 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. Defendant was adjudicated a persistent violent felony offender and was sentenced to an aggregate term of incarceration of from forty-five years to life.

Defendant appealed and the conviction was affirmed by the Appellate Division, Second Department by order dated April 9, 2001. See People v. Largo, 282 A.D. 2d 548(2d Dept.2001); leave to appeal denied, 96 N.Y. 2d 903(2001). Defendant subsequently moved before this court to set aside the verdict pursuant to C.P.L. Section 440.10(1)(h). Said motion was denied by this court, by decision and order dated May 23, 2002. Defendant then moved in the Appellate Division, Second Department for a writ of error coram nobis based upon ineffective assistance of appellate counsel which was denied by order dated November 12, 2002. People v. Largo, 299 A.D. 2d 425(2d Dept. 2002). Defendant also moved in Federal District Court for a writ of habeas corpus which was denied by decision and order dated March 4, 2004. See Largo v. Griener, 2004 U.S. Dist. LEXIS 5616.

In the present motion defendant moves for a free copy of the trial transcript stating that a copy of the transcript is

necessary to assist in the prosecution of a second motion to vacate the conviction pursuant to C.P.L. Section 440.10.

The court notes, as stated above, that defendant appealed the judgment of conviction in this matter and that said conviction was affirmed by the Appellate Division, Second Department in an order dated April 9, 2001. A copy of the transcript was prepared incidental to that appeal and incidental to the Writ of Habeas Corpus decided on March 4, 2004. The defendant has failed to provide the court with any reason why an additional copy of the transcript is needed to proceed in this court at this time.

In addition, the courts have held that although the Constitution requires that an indigent defendant is entitled to poor person relief as of right for trial and the first appeal, the Constitution does not require that the State provide poor person relief in discretionary appeals or after the initial appeal. Ross v. Moffitt, 417 U.S. 600(1974). The United States Supreme Court has also held that the Constitution does not require that poor person relief be provided for indigent defendants in collateral proceedings. Pennsylvania v. Finley, 481 U.S. 551(1987). A motion made pursuant to C.P.L. Section 440.10 is a collateral proceeding for which a defendant is not entitled to a transcript without cost.

Sheri S. Roman, J.S.C.

Dated: December 1, 2004

Gloria D'Amico
Clerk