

Short Form Order

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM - PART K-23 - QUEENS COUNTY
125-01 QUEENS BLVD. KEW GARDENS, NY 11415

P R E S E N T:

HON. ROBERT CHARLES KOHM
Justice

_____	:	
THE PEOPLE OF THE STATE OF NEW YORK	:	
_____	:	Ind. No. <u>1923/04</u>
-against-	:	
	:	Motion: Vacate Judgment
ARTHUR WOLTERS,	:	
	:	
Defendant.	:	
_____	:	

The following papers numbered
1 to 3 submitted in this motion.

ARTHUR WOLTERS, PRO SE
For The Motion

HON. RICHARD A. BROWN, D.A.
BY: TINA LOSCHIAVO, ADA
Opposed

	Papers Numbered
Notice of Motion/Affidavits/Exhibits _____	<u>1</u>
Answering & Reply Affidavits/Exhibits _____	<u>2 - 3</u>
Hearing Minutes _____	_____

Upon the foregoing papers, the defendant's pro se motion pursuant to CPL 440.10 to vacate the judgment rendered November 16, 2004, convicting him of aggravated unlicensed operation of a motor vehicle in the first degree, upon a jury verdict, and for related relief, is denied in its entirety.

Defendant filed a notice of appeal of the judgment on November 24, 2004. He has failed to timely perfect the appeal (see, 22 NYCRR 670.8).

As stated in this court's March 17, 2005 decision and order denying defendant's prior CPL 440.10 motion, a motion pursuant to CPL 440.10 may not be used as a substitute for a direct appeal (see, People v Mower, 97 NY2d 239; People v Cooks, 67 NY2d 100; People v Kandekore, 300 AD2d 318, lv denied 99 NY2d 616, cert denied 540 US 896). As sufficient facts with respect to defendant's current claims either appear on the record of these proceedings for the Appellate Division to have adequately reviewed the claims upon a timely appeal, or, with due diligence, could have been made to appear on the record before entry of the final judgment, the claims are barred before this court (see, CPL 440.10 [2][b], [3][a]; People v Mower, supra; People v Cooks, supra).

Moreover, seriatim motions seeking the same relief should be discouraged, as they adversely impact upon judicial resources (see, Preiser Practice Commentaries, McKinney's Cons Laws of NY, Book 11A, CPL 440.10, at 427). Since, as noted, defendant previously moved to vacate judgment and failed to raise his current claims, they are denied (see, CPL 440.10 [3] [a]).

To the extent that defendant alleges that the portion of an earlier Sullivan County trial transcript relating to the testimony of a Department of Motor Vehicles supervisor is newly-discovered evidence, the claim is without merit. Rather than support defendant's claims, the transcript demonstrates a basis for both the Sullivan County and instant proceedings (see, People v Salemi, 309 NY208 cert denied 350 US 950; People v Waller, 4 AD3d 440, lv denied 2 NY3d 747; People v James, 299 AD2d 424; People v Pacheco, 293 AD2d 629).

Defendant's allegations concerning a conspiracy among four separate prosecutors, his attorney, the court, and a representative of the Department of Motor Vehicles to convict him and obtain a forfeiture of his property are based solely on defendant's self-serving and conclusory assertions, and fail to raise an issue of fact with respect to same (see, CPL 440.30[4][b], [d]; People v Brown, 56 NY2d 242; People v Ford, 46 NY2d 1021; People v Session, 34 NY2d 254). Exhibits F-I submitted by defendant, documentation relating to his funds held by the police Property Clerk subsequent to his arrest, do not support his claims, nor has defendant demonstrated any deficiencies in his counsel's performance (see, People v Stultz, 2 NY3d 277; People v Benevento, 91 NY2d 708; People v Baldi, 54 NY2d 137). Contrary to defendant's allegations,

the default convictions on his parking violations were proper under Vehicle & Traffic Law § 1806-a(4).

To the extent that defendant seeks appointment of counsel to represent him on this motion, an indigent defendant has no constitutional right to appointment of counsel in a collateral proceeding (see, Ross v Moffitt, 417 US 600; People ex rel. Williams v LaVallee, 19 NY2d 238), and defendant has failed to demonstrate a compelling need for the court's discretionary appointment of same (see, People rel. Williams v LaVallee, supra).

Order entered accordingly.

The Clerk of the Court is directed to forward a copy of this order to the defendant at his place of incarceration and to the District Attorney.

GLORIA D'AMICO
Clerk

Date: September 8, 2005 _____

ROBERT CHARLES KOHM, J.S.C.

