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Short Form Order

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM - PART K-20 - QUEENS COUNTY

125-01 QUEENS BOULEVARD – ANNEX
KEW GARDENS, NY 11415

P R E S E N T:

HONORABLE ROGER N. ROSENGARTEN
JUSTICE

THE PEOPLE OF THE STATE OF NEW YORK	Ind. No. 3221/96
-against-	Motion: for discovery, Grand Jury minutes, sentencing minutes, pre- sentence report, further CPL 440 Motion, and other relief.
DOMINICK LAROCCO, Defendant.	Submitted: November 27 , 2001

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

BY: Dominick Larocco, Defendant *Pro Se*
For the Motion

HON. RICHARD A. BROWN, D.A.
District Attorney, Queens County
BY: No responsive papers filed

	Papers Numbered
Notice of Motion and Affidavits Annexed	_____

Upon the foregoing papers, and in the opinion of the Court herein, defendant's motion, one of numerous, duplicative, *pro se* motions that the defendant has submitted to this Court since his sentencing on September 17, 1997, is denied in all respects, in accordance with the annexed memorandum of this date.

The defendant is enjoined from instituting any further *pro se* proceedings without the prior, express permission of this Court.

Defendant's failure to comply with this Order will constitute grounds for a finding of contempt, and imposition of monetary sanctions pursuant to Section 750 of the Judiciary Law.

IT IS SO ORDERED.

Date: November 27, 2001

ROGER N. ROSENGARTEN
J.S.C.

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THE PEOPLE OF THE STATE OF NEW YORK	:	BY **ROSENGARTEN, J.**
	:	
-against-	:	DATE: November 27, 2001
DOMINICK LAROCCO, Defendant.	:	INDICTMENT NO.: 3221/96

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Defendant moves, *pro se*, for discovery, Grand Jury minutes, sentencing minutes, for his pre-sentence report, and for other relief. The defendant's motion, and each and every branch thereof, is denied in its entirety.

Defendant was convicted by plea of guilty on August 5, 1997 of Attempted Murder in the Second Degree. He was sentenced on September 17, 1997 to an indeterminate sentence of imprisonment of eight to sixteen years. He waived his right to appeal. Nonetheless, he appealed his sentence on the ground that it was excessive. The Appellate Division affirmed, finding the defendant's contention meritless. (*see, People v. LaRocco*, 253 A.D.2d 469 [2d Dept. 1998]).

Since that time, he submitted at least fifteen separate requests for various forms of relief to the late Justice Finnegan, who denied them as being without merit in a decision dated February 23, 1999. Since this Court assumed the handling of this matter in 1998, the defendant has submitted a series of approximately twenty non-meritorious post-judgment applications to this Court to date (*see* addendum to this decision). In addition, he has submitted copies of various letters to the Court in which he complains of problems while in the custody of the Department of Corrections, which he was directed to address to the Office of the Inspector General, but nevertheless continues to forward to the Court. He also sent this Court copies of complaints he has made, *inter alia*, to elected officials, to the Commission on Judicial Conduct, and to the Chief Administrative Judge about his dissatisfaction with this Court. He

has mailed this Court a copy of a purported Notice of Appeal in which he stated that "there has been nothing but lies" in this Court's decisions. He has wrongly accused this Court and its staff of not mailing him copies of its decisions, and this Court has responded by personally delivering copies of its decisions to his mother in court. He represented to the Court in written motion papers that he had retained an attorney to represent him in connection with his motions for post-trial relief, only to have the attorney in question contact this Court in writing, and unequivocally refute any involvement with the defendant. The Court has admonished him in its decisions, that there is presently no criminal action pending before this Court, and accordingly, no basis for any discovery motions. Notwithstanding that advisement, and the admonition that he would be held in contempt, the defendant continues to submit redundant and legally specious motions to this Court. In the within motion, which is a rehash of a previously denied application seeking various unavailable forms of relief, contrary to defendant's statement, in paragraph "1" of his motion, there is no C.P.L. 440 motion pending before this Court, the latter having been denied in all respects. The Court has repeatedly referred the defendant to its prior decisions covering the same territory he seeks to re-litigate. One of the defendant's own submissions includes a copy of the Court's decision denying his application, which he claims is still outstanding. The defendant refuses to exercise any restraint by stemming the flow of his misdirected, repetitious, and legally specious submissions, despite being warned by this Court that a contempt finding would result from his persistence. At this point, defendant's claims are nothing more than a procedurally defective rehash of prior arguments that were raised and rejected by both Justice Finnegan, and this Court.

A summary of the defendant's contacts with this Court, in chronological order, is annexed as an addendum to this decision. The Court notes that its predecessor, the sentencing Court, had likewise been peppered with almost-weekly contacts from this defendant, which have been omitted for the sake

of brevity. In total, the Court has counted over 30 contacts with the defendant since it assumed the handling of this matter in 1998.

This Court finds that the defendant has engaged in a conscious pattern of baseless litigation which has resulted in vexation, harassment and needless expense, which has placed an unnecessary burden on this Court and its supporting personnel. The defendant has expended countless hours concocting and mailing these missives in shotgun fashion, not to mention the expenditures in postage to mail his applications, many of which were sent to this Court via certified, return-receipt requested. The Court has expended countless hours to process and calendar these baseless applications, to read them, and to issue and re-issue decisions on each application. Moreover, the Court has expended time to respond and contradict the defendant's baseless accusations that he was not being sent copies of said decisions.

The current application is a continuation of his past behavior, which threats of contempt have done little to quell, thereby compelling this Court to take stronger action. Section 750 of the Judiciary Law allows the court to impose a fine of up to $1000 or a jail sentence of up to thirty days for Criminal Contempt for a party who "willfully disobeys a lawful mandate of the court." Clearly, the defendant has shown little regard for the lawful mandate of this Court, and has intentionally disregarded it. However, unless said contempt occurs in the court's presence, the sanctioned party is entitled to a hearing, and an opportunity to be heard before any sanction may be imposed. As my colleague, Justice Rotker recently observed, any attempt to impose sanctions under the Judiciary Law would require this Court to conduct a hearing, make findings of fact and conclusions of law, which would result in an additional waste of this Court's time as well as providing Mr. Larocco with the audience and forum he desires for his circular argumentation. (*see, Matter of Hailazopoulos*, NYLJ, 11/30/01 at p. 20, c. 4). Reviewing the list of Mr. Larocco's past submissions, and considering the fact that there is no criminal action currently

pending before this Court, the Court finds that there is no relief which the defendant might move for in good faith, which has not already been requested, *ad nauseum*, by Mr. Larocco. Thus, this Court declines to indulge Mr. Larocco any further, instead opting to impose an injunction upon the defendant's future right to file *pro se* applications. The Court finds that it has the inherent power to impose this sanction. (*see, People v. I.L.*, 143 Misc.2d 1061 [Sup. Ct. Bronx, Co. 1989]; *Matter of Diane D.*, 161 Misc.2d 861 [Sup. Ct. N.Y. Co. 1994]; *Spremo v. Babchik*, 155 Misc.2d 382 [Sup. Ct. Queens Co. 1992], *modified and affirmed*, 216 A.D.2d 382 [2d Dept. 1995], *appeal denied*, 86 N.Y.2d 709 [1995]; *certiorari denied,* 516 U.S. 1161 [1996]).

Accordingly, it is Ordered that Dominick Larocco is enjoined from instituting any further *pro se* proceedings before this Court without the express, prior, approval of this Court. Said approval shall be annexed by the defendant as the cover page of any future moving papers before they will be accepted for calendaring. Any papers submitted without such approval shall be considered a nullity, and will not be considered.

The Court admonishes Mr. Larocco, that any further violation of this Order will result in a contempt hearing, limited to the issue of his contumacious conduct with respect to this Court's mandates. Should that become necessary, thereby requiring the Court to have the defendant produced from the place upstate where he is being housed, and to expend more time enforcing its orders and mandates, it will impose a substantial monetary fine upon Mr. LaRocco, which will be levied from inmate funds, effectively depleting his inmate account while he remains incarcerated for the balance of his sentence.

This Court opines that, while conduct of the type exemplified by Mr. Larocco is not commonplace, it does occur on a frequent-enough basis to cause a substantial waste of resources, which the Court system can ill afford to expend on vexatious litigants like Mr. Larocco. This behavior works to the

detriment of the honest litigant who is deprived of his or her fair share of these limited resources, and to the similar detriment of the administration of justice as a whole. Correctional facilities should not become a haven for the proliferation of unskilled, untrained, "jailhouse"-lawyering by inmates desperately seeking release, and those within the prison system whose efforts they enlist to file frivolous motions on their behalf. The time has come for the New York State Legislature and Office of Court Administration to act to stem the tide of frivolous *pro se* litigation by incarcerated defendants in criminal matters. There is no satisfactory avenue of relief currently available to the Court to control an out-of-control incarcerated defendant in a criminal context, comparable to that which is available in a civil context. Most criminal courts are therefore obliged to entertain and decide each and every application drawn by an incarcerated defendant. Many of these applications are virtually unintelligible. They are crafted in such a rambling and incoherent manner as to defy the Court's best and most zealous efforts to discern what legal relief is sought and what, if any, basis it might have in law or fact. Part 130 of the Rules of the Chief Administrator of the Unified Court System (22 NYCRR Part 130), facially applies to frivolous conduct that occurs in a "civil action or proceeding". Thus the sanctions available under Part 130 cannot be imposed in the matter at bar. Part 130 could be amended to include criminal actions in which the Court has previously admonished the defendant to refrain from conduct it deems frivolous, i.e., the re-litigation of issues which have previously been determined by the Court. Moreover, as aforementioned, Judiciary Law Section 750 punishes wilful disobedience of a Court's lawful mandates, but where, as here, the defendant is incarcerated, and the conduct consists of the blunderbuss submissions of numerous specious applications by mail, the offensive conduct is not committed within the presence of the court. The court is thereupon obliged to hold a hearing. To produce the defendant for the hearing would require the New York State Department of Corrections to transport the defendant from an upstate correctional facility. The

Court must then afford the defendant the opportunity to be heard, thereby risking further contumacious conduct on the part of the defendant and virtually insuring that the defendant will attempt to re-make in person arguments which he or she has been told are lacking in merit. All of this costs the taxpayers of the State of New York money, which could be better earmarked for worthy litigants and the administration of justice. The legislature should amend the Judiciary Law to include within the proscription of summary contempt conduct which, while not occurring in the presence of the court, occurs through the submission of written materials which the defendant has been clearly and previously advised are without legal basis or redundant to those previously submitted, where it is clear that the defendant knew or should have known of that fact. This would allow the Court to impose a fine or extend the jail sentence of anyone who consciously abuses the system, while not chilling applications which have some good-faith basis.

In conclusion, the defendant's motion is denied in all respects.

Order entered accordingly.

A copy of this memorandum has been forwarded to the defendant *pro se*, and to the Office of the District Attorney, in accordance with the annexed affidavit of service, and distributed to the motion support office for implementation.

Date: November 27, 2001

_____
ROGER N. ROSENGARTEN
J.S.C.

ADDENDUM - LAROCCO CONTACTS

5/18/99 - defendant filed a pro se motion to proceed as a Poor Person, Upon a Petition for a Writ of Coram Noblis and Motion Pursuant to CPL 440 - decision sent to defendant, motion denied.

6/24/99 - defendant filed a pro se motion to vacate judgement - decision sent to defendant, motion denied.

11/1/99 - defendant filed a post Judgement motion, decision sent to defendant - motion denied.

11/17/99 - defendant filed a post Judgement motion, decision sent to defendant - motion denied (again)

11/29/99 - defendant filed a restraining order motion – decision sent to defendant, motion denied.

12/8/99 - defendant filed a pro se motion for Poor Person Transcript - decision sent to defendant, motion denied.

12/25/99 - defendant sent a Christmas card to Judge Rosengarten, wishing him a "Blessed Christmas Season".

3/21/00 - defendant filed a pro se motion for Subpoena Duces Tecum - decision sent to defendant, motion denied..

4/10/00 - defendant filed a motion for Subpoena Duces Tecum- decision sent to defendant, motion denied.

4/28/00 - defendant filed a pro se motion for Poor Person Transcription - decision sent to defendant, motion denied.

5/3/00 - defendant wrote a letter to Judge Rosengarten that he has an attorney, Mr. Oddo, Esq., representing him on the 440 motion.

5/4/00 - Mr. Oddo, Esq. writes a letter to Mr. Larocco demanding that he stop representing to anyone that he is his attorney, with a copy to Judge Rosengarten.

5/5/00 - defendant filed a pro se motion for Poor Person Transcript - decision sent to defendant, motion denied.

5/10/00 - defendant filed a motion for Subpoena Duces Tecum and 18b counsel - decision

sent to defendant, motion denied.

5/24/00 - defendant copies Judge Rosengarten on letter sent to Hon David R. Homer, U.S. District Court, regarding lawsuit against correction officers not giving him his mail, copy sent to Attorney General's office.

6/12/00 - defendant filed a pro se motion to withdraw his plea - decision sent to defendant, motion denied.

6/29/00 - defendant filed a pro se motion to vacate judgement - decision sent to defendant, motion denied.

7/25/00 - defendant copies Judge Rosengarten on letter sent to Hon. Steven W. Fisher re 440 motion, complaining that he did not receive copies of court decision that the Court sent on 9/11/99, 1/6/00.

8/7/00 - defendant copied Judge Rosengarten on letter sent to Mr. James Pelzer, Appellate Division complaining that he could not get a copy of the decision on Coram Noblis and 440

8/25/00 -defendant copied Judge Rosengarten on letter sent to Hon. Jonathan Lippman - re: complaint pertaining to his 440 motions - with copies sent to Clerk of the Appellate Division

9/5/00 - The Court sent a fax with requested copies of the defendant's motions to him where he was being housed. The name of the person who received the fax was Gail Lebelhoer - fax number redacted for privacy purposes.

9/11/00- The Court sent a memo was sent to Hon. Steven W. Fisher in response to the defendant's complaints of not receiving decisions, explaining that all correspondence was sent to Mr. Larocco, and our Court Clerk, Ms. Russell handed copies of all motions to the defendant's mother in the courtroom Part K-20.

9/27/00 - defendant filed a 440.10 motion - decision sent to defendant, motion denied, with warning of sanctions against him.

10/31/00 - defendant filed a pro se CPL 440 - decision sent to defendant, motion denied.

2/2/01 - defendant copied Judge Rosengarten on letter to Jonathan Lippman re: his motions coram noblis and motions pursuant to CPL. 440.10 and 440.20

2/12/01 - Mr. Larocco sent to the Court a copy of the M.E. report on the deceased which was sent to him. Mr. Larocco sent a letter back for "in camera demand for Bill of Subpoena Duces Tecum Pursuant to CPL 340.30 & 240.10".

4/12/01 - defendant filed a pro se motion for subpoena Duces Tecum - decision sent to

defendant, motion denied.

5/10/01 - defendant filed a pro se motion sent re: 440 and 440.20 - motion answered on May 23, 2001 -decision sent to defendant, motion denied.

5/14/01 - defendant filed a pro se motion to vacate judgement - decision sent to defendant, motion denied.

5/21/01- defendant copied Judge Rosengarten on letter sent to State Commission on Judicial Conduct re: investigation of Hon. Rosengarten and Hon. DA Brown.

9/16/01 - defendant copied Judge Rosengarten on letter sent to DA Brown re to allow defendant a hearing on evidence and trial - with copies sent to Lois Bloom, Hon. Nicholas Garaufis, U.S. District Court Judges, Charles Schumer, Raymond Meier, Roger Rosengarten

9/27/01 - defendant copied Judge Rosengarten on letter sent to Hon. Lois U.S. District Court re: Timeliness of filing - copies sent to Raymond Meier NY State Senator, Charles Schumer.

11/1/01 - defendant filed the instant pro se motion for Pre-sentence report and free transcript - denied herein, copy of this decision sent to defendant.