SUPREME COURT, NASSAU COUNTY

CRIM. TERM: PART 44

PRESENT:

HON. TERESA K. CORRIGAN, AJSC

X

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

Ind No. 67104/87, 67430/88
and 69783/88

JESSE FRIEDMAN

Defendant. X

On June 23, 2014, Defendant Jesse Friedman, by Counsel Ronald L. Kuby, moved this Court to overturn defendant's conviction and dismiss the underlying Indictments on three grounds: (1) actual innocence; (2) the knowing use of false testimony before the Grand Jury; and (3) an impermissibly coerced plea of guilty as a result of bias perpetrated upon the defendant by the now deceased, Judge Abby Boklan. The Nassau County District Attorney's Office (hereinafter, "NCDAO") filed their opposition on September 8, 2014, wherein they consented to allowing the defendant an opportunity to be heard at an "actual innocence" hearing but opposed the granting of the motion or inclusion of defendant's second and third points as part of that hearing. Defense filed a reply on October 10, 2014, requesting that the hearing consented to by the NCDAO include all aspects of his motion. Below is the Court's decision on this matter.

Procedural History

The criminal case against Jesse Friedman dates back to 1987 when a search warrant was executed in the Friedman home. Thereafter, three separate grand juries handed up Indictments against Jesse Friedman and others between December 1987 and November 1988. On December 20, 1988, Jessie Friedman pleaded guilty to seventeen (17) counts of sodomy in the first degree, four (4) counts of sexual abuse in the first degree, one (1) count of attempted sexual abuse in the first degree, one (1) count of use of a child in a sexual performance, and two (2) counts of endangering the welfare of a child in satisfaction of all three Indictments. He was subsequently sentenced to concurrent upstate prison terms, the longest of which was six (6) to eighteen (18) years.

Jesse Friedman was released from incarceration in December 2001. In 2003, a movie entitled "Capturing the Friedmans" was released. Thereafter, in January 2004, defendant filed his first motion to vacate his judgement of conviction, never having done so while incarcerated. He

argued that the statements of several witnesses against him were obtained by inappropriate means, including suggestive interviews or controversial therapy techniques and that the NCDAO failed to disclose this critical evidence in violation of the mandate set forth by Brady v. Maryland, 373 U.S. 83 (1963). An undated affirmation by Friedman's then attorney, Peter Panaro, was annexed to the motion as support for that position as were excerpts from the documentary noted above. The NCDAO filed their opposition in November 2004, and the motion was denied in January 2006. The Appellate Division, Second Department, denied defendant leave to appeal and his application for leave to appeal to the New York Court of Appeals was likewise dismissed.

Thereafter, Jesse Friedman filed a petition for a writ of habeas corpus, in June 2006, before the United States District Court, Eastern District of New York. That Court dismissed the petition on timeliness grounds; however, the decision was appealed to the Second Circuit Court of Appeals. The Second Circuit Court ruled against the defendant stating, [e]ven if the petition is deemed timely, petitioner's Brady claim fails on the merits." Friedman v. Rehal, 618 F.3d 142, 152 (2nd Cir. 2010). The Second Circuit, relying primarily on the movie "Capturing the Friedmans," encouraged the NCDAO to undertake a review of the defendant's case and evaluate his claims of actual innocence.

Judge Reena Raggi wrote a separate opinion concurring with the majority ruling related to Brady matters. She further stated, "[w]hile the acts alleged are disturbing and may well warrant further inquiry by a responsible prosecutor's office, I cannot predict whether the outcome of any such inquiry will be favorable to petitioner, whose conviction is based on a plea of guilty that he thereafter publicly confirmed." Id. at 161, 162.

The NCDAO began its review in 2010. In September 2012, a Freedom of Information Law ("FOIL") request was filed by defendant, denied by the NCDAO and subsequently heard, via an Article 78 proceeding before the Supreme Court, Nassau County. The ruling of the Supreme Court, which granted defendant's FOIL request, is pending appeal. In June 2013, the NCDAO released a report detailing the results of the investigation into defendant's conviction. In June 2014, the defendant filed a defamation lawsuit against the District Attorney and two others in the NCDAO and also filed this motion pursuant to CPL§440.10 seeking to vacate his judgement of conviction and to dismiss the underlying Indictments.

The Court requested the appearance of all attorneys on July 8, 2014, and a schedule was set for the NCDAO's opposition and defendant's reply. Additionally, a recusal motion was discussed and thereafter filed by defense, opposed by the NCDAO and replied to by defense. The Court denied that motion on October 24, 2014, and now turns its attention to this matter.

Documents Relied upon by the Court

In deciding this motion, the Court relied upon the submission of both parties, including all attachments provided to the Court **except** the transcript of the movie "Capturing the Friedmans" which is found as Exhibit Z in Defendant's initial submission. This Court has not viewed the

documentary and has not read the transcript of same. It is this Court's belief that this motion should be decided on evidence that is not subject to the editing skills of successful and talented movie producers.

As stated above, on July 8, 2014, this Court asked the attorneys to appear before it to discuss, *inter alia*, the attachments provided by counsel for defendant. The Court noted that certain exhibits were not provided to the Court despite there being an indication that it was attached, while others were missing pages or seemed incomplete (excerpted). Counsel for defense advised the Court that he would review the Court's requests and attempt to provide the requested information. As of this writing, the Court has not received any additional documents from defense. The People, in their response to this motion, did provide some of the requested information.

Because there are thousands of pages related to this motion, the Court will list those documents that provided significant insight to the Court and played a major role in the Court's decision. They are: Defense Exhibit A, Letter of N. Scott Banks, Esq to the Hon. F. Dana Winslow; Defense Exhibit JJ, excerpted interview of Scott Banks; Defense Exhibit KK, Ross Goldstein letter to the Case Review Panel dated March 8, 2013; Defense Exhibit LL, undated affirmation of Peter Panaro, Esq.; Defense Exhibit JJJ, excerpted interview of Judge Boklan; People's Exhibit 1, Affirmation of Joseph Onorato dated August 13, 2004; People's Exhibit 2, transcript of recorded interview between Defendant and Peter Panaro, Esq.; People's Exhibit 4, transcript of Judge' Boklan's complete interview with film makers; Appendix 000603-000616, "Notes from Marc's late November conversation with Ross." The Court likewise relied upon the affirmation of Barry C. Scheck which the Defendant attached to his Notice of Motion in addition to the Conviction Integrity Review Report and its attachments, specifically the section related to Ross Goldstein and the "Statement of the Friedman Advisory Panel" located at the beginning of the Report and signed off on by each member of the case advisory panel, including Barry Scheck, Esq..

Legal Analysis

Defendant's motion asking the Court to overturn his conviction and dismiss the underlying Indictments is initially based on a claim of "actual innocence." As the NCDAO has consented to a hearing related to same, this Court grants same and notes that the moving papers of defense made "a sufficient showing of possible merit to warrant a fuller exploration." People v. Hamilton, 115 A.D.3d 12, 27 (2nd Dept. 2014), *citing* Goldblum v. Klem, 510 F3d 204,219, *cert denied* 555 U.S. 850, 129 S. Ct. 106, 172 L. Ed. 2d 85, *quoting* Bennett v. United States, 119 F3d 468, 469 [7th Cir]. The burden is now on the defendant to establish his innocence by clear and convincing evidence. Id.

The Court next turns its attention to the claim surrounding the Grand Jury Indictments. New York State's Constitution mandates that "no person shall be held to answer for an infamous crime...unless upon indictment of the Grand Jury." NY Const., Art I; Section 6. That

constitutional mandate is now codified within the Criminal Procedure Law (hereinafter, "CPL") Article 190. The legal standard required for an indictment is stated in CPL§190.65(1) and defined in CPL §70.10(1) which requires legally sufficient evidence of a crime and reasonable cause to believe that the accused committed the crime. *See* People v. Pelchat, 62 NY2d 97 (1984). "The test is whether the evidence before the Grand Jury if unexplained and uncontradicted would warrant conviction by a trial jury." Id. at 105. It is the indictment that gives the court jurisdiction over the matter before it.

Indictments are presumed to be valid and a plea of guilty forecloses review of the sufficiency of the Grand Jury evidence and certain technical defects as long as those defects "do not impair the integrity of the Grand Jury process." Id. at 108. That which is not foreclosed includes: (a) challenges to jurisdiction. *See* People v. Harper, 37 NY2d 96, 99 (1975) ("[a] valid and sufficient accusatory instrument is a nonwaivable jurisdictional prerequisite to a criminal prosecution.") [*quoting* People v. McGuire, 5 NY2d 523,527; People v. Scott, 3 NY2d 148, 152)]; (b) challenges to the constitutionality of a statute. *See* People v. Lee, 58 NY2d 491, 494 (1983) ("a plea of guilty, however, is in no way inconsistent with the contention that, conceding commission of all the acts charged, the provision of statute or ordinance which proscribes the particular conduct as criminal is nonetheless unconstitutional."); (c) challenges to speedy trial. *See* People v. Blakley, 34 NY2d 311, 314 (1974) ("[t]he improper denial of a motion to dismiss the indictment on the grounds that the defendant has not been afforded a speedy trial survives a plea of guilty on appeal") [*citing* People v. Wallace, 26 NY2d 371; People v. Henderson, 20 NY2d 303, 305; People v. Chirieleison, 3 NY2d 170]; *compare*, People v Friscia, 51 NY2d 845 (1980) (calculation of time is waived by a plea of guilty when no constitutional deprivation is demonstrated); (d) challenges to a person's competency. *See* People v. Francabandera, 33 NY2d 429 (1974) (issues related to voluntariness of a plea based on competency is always appealable); (e) challenges to the motive for convening a grand jury. *See* People v. Tyler, 46 NY2d 251 (1978) (convening a grand jury for the primary purpose of trapping defendant into a perjury charge invalidates the subsequent indictment; a question of fact must be presented to the grand jury); and (f) challenges to the use of knowingly inadmissible or insufficient evidence. *See* People v. Peetz, 7 NY2d 147 (1959) (the prosecutor's concession that evidence before the grand jury was not legally admissible is not cured by a conviction after trial).

That which is foreclosed by a plea of guilty includes: (a) claims of selective and vindictive prosecution. *See* People v. Rodriguez, 55 NY2d 776 (1981); (b) claims of prosecutorial misconduct. *See* People v. DiRaffaele, 55 NY2d 234 (1982); (c) claims that evidence acquired post indictment may have lead to an acquittal. *See* People v. Goetz, 68 NY2d (1986); (d) any challenge in the fact finding process engaged in by the grand jurors. *See* People v. Hansen, 95 NY2d 227 (2000); People v. Sobotker, 61 NY2d 44 (1983) (although a constitutional right may survive a guilty plea, a related statutory right is forfeited if it confers more than the Constitution requires). Courts have consistently held that allowing statutory rights to survive the plea of guilty is inconsistent with plea bargaining when a Constitutional right is not impacted. *See* People v. Dunbar, 53 NY2d 868 (1981).

Defense argues that the underlying Indictments obtained in this case were the result of knowingly unreliable and perjured testimony. Defense places significant weight for its position on the methods used by the police to obtain statements from child witnesses and the statements of Scott Banks, law secretary to Judge Abby Boklan, Ross Goldstein, and other "recanting" witnesses. The Court has carefully reviewed each of the referenced statements and find them lacking in support for defendant's position.

Turning first to Scott Banks. The Court has no reason to doubt the veracity of his letter to Justice F. Dana Winslow or to doubt the excerpted statement provided to the Court that he gave to the film makers of "Capturing the Friedmans." A careful review of those documents shows that Scott Banks found "the testimony elicited in the Grand Jury met the legal standards of sufficiency pursuant to CPL§210.20..." Defense Exhibit A. A review of the court file shows that when counts were not supported by legally sufficient evidence, they were dismissed by the court. Scott Banks' other concerns related to the quality of the evidence presented to the grand jury is not one that rises to the level of a constitutional, due process, concern that survives a guilty plea. Clearly, Scott Banks would not and could not have known if the testimony he reviewed was knowingly false when used or subsequently determined to be false. As such his statements and position lend little support for this particular legal argument.

A review of Ross Goldstein's statements in support of this position fare no better. The Court reviewed Ross Goldstein's first recorded statements related to the Friedman matter. When first contacted by the producers of "Capturing the Friedmans," Goldstein was adamant about not wanting to be a part of the film. Friedman had sent him a letter that implied that the two did not know each other and that Goldstein was not present in the Friedman home. Goldstein stated, "...but the bottom line is that he's just not clear about, or just not choosing to remember a more truthful. I'm not saying that...he's just basically making it sound like he never even really knew me..." Appendix 000603. Moments later, in response to a statement by the interviewer that Friedman "looks at the film as being exonerating to some extent...we have found quite a bit of exonerating stuff," Goldstein replies, "that is total...that is something that I would definitely care to share as something completely untrue...that's why I honestly feel partly that me getting involved in the film is not good...will not help him." Id. He later continued,

> "It's not my place to do that and I really think and have thought from the beginning that it's a really kind of ballsy, and I'm not sure in such a good way, undertaking to try to make this kind of a film that it just seems like you guys are going for black and white and there's tons of grey area...it's gonna be grey like its not going to add up to something in my opinion that's either gonna exonerate him all the way or make the police look bad all the way...it's too grey, there's too much stuff that could never be captured in the film." Id. at 000604.

At the end of the interview when Goldstein is given the opportunity to state that his

statements regarding his involvement in this matter and his knowledge of Friedman's involvement were not true, he replies, "but that's against my will and that's not my problem." Id. at 000616. Thereafter, on March 8, 2013, Goldstein provided a letter to the Friedman case review panel in which he states that his testimony before the grand jury was a complete fabrication and a "result of tremendous and unrelenting pressure and intimidation by the police and district attorney's office..." Defense Exhibit KK. On March 14, 2013, Ross Goldstein met with the review team and two members of the advisory panel in his attorney's office. At that meeting, Goldstein reiterated his recantation but was unable to explain the marked difference in his position from not recanting to full recantation. As such, the Court can not and will not rely on Ross Goldstein to determine that the prosecution "should have known" that his testimony was false or grant a hearing to determine same. This is a specific legal argument with specific legal criteria that need to be met and defense fails to meet that criteria based on the evidence presented related to Ross Goldstein. Moreover, Goldstein only testified relative to the third Indictment and played no part in the first two.

Regarding additional recantation evidence that the defense relies upon to seek dismissal of the Indictments based on the knowing use of false testimony, the defense again fails to meet its burden. That someone recants at a future time does not necessarily equate itself with the prosecution's knowledge that the original testimony is false and should not be used. Courts have consistently held that recantation evidence is suspect and needs to be carefully evaluated when used to overturn a conviction. *See* People v. Deacon, 96 AD3d 965 (2nd Dept. 2012); People v. McGuire, 44 AD3d 968 (2nd Dept. 2007); People v. Shilitano, 218 NY 161 (1916). The proposed recantation evidence espoused by defense throughout his motion again fails to meet the legal burden to grant his motion or to obtain a hearing.

Counsel's reliance on interviewing techniques and best practices as support for this position is likewise misplaced. Such information, alleged by counsel without affidavits of individuals admitting to using the alleged problematic interview techniques, does not equate with the legal requirement that the defense show that the prosecution placed knowingly false testimony before the grand jury. That interviewing techniques have evolved over the years is not grounds for vacating prior convictions based on the legal standard relied upon in this motion.

Moreover, to argue in reply that all of this evidence will be before the Court anyway in the "actual innocence" hearing is meritless. The hearing that has been consented to will be bound by the parameters of "actual innocence" and this Court will not allow hearings within hearings to determine that which the law allows the Court to decide on papers. Defense failed to meet it's burden to show that the prosecution knew, should have known or later learned that false testimony was used in the grand jury and defendant's motion to dismiss the indictment based on same, or to include same in an "actual innocence" hearing, is denied.

The Court next turns its attention to that part of the motion that seeks dismissal of the Indictments based on a plea of guilty that is alleged to have been obtained via improper coercion from the prior Court. In reply, defense asked that this matter be included as part of the "actual

innocence" hearing if dismissal is not granted by the Court. The NCDAO objects to both requests.

A guilty plea is valid if it is entered knowingly, intelligently and voluntarily. *See* People v. Fiumefreddo, 82 NY2d 536 (1993). Moreover, a plea is not coerced if it follows a statement by the court advising the defendant of the potential maximum sentence faced if the defendant should be convicted after trial. *See* People v. Bravo, 72 AD3d 697 (2nd Dept. 2010); People v. Allen, 273 AD2d 319 (2nd Dept. 2000); *compare*, People v. Rogers, 114 AD3d 707 (2nd Dept. 2014)(Court's remarks that it would have "no problem" imposing the maximum sentence if the defendant was convicted after trial were impermissibly coercive).

A defendant's contention that a plea was involuntarily entered can always be raised on appeal. *See* People v. Seaberg, 74 NY2d 1 (1989); People v. Santiago, 71 AD3d 703 (2nd Dept. 2010). However, when a plea is entered as part of a plea bargain which includes a waiver of one's right to appeal, "the negotiating process serves little purpose if the terms of a 'carefully orchestrated bargain' can subsequently be challenged." Seaberg at 10 *citing* People v. Prescott, 66 NY2d 216, 220 (1985).

When the allegations of coercion are not part of the record, a hearing should be held to determine same. *See* People v. Glasper, 14 NY2d 893 (1964). At such a hearing, the plea taking judge would be required to testify as a witness. A hearing is not required if there are uncontroverted allegations by defendant purporting the coercion in the form of a detailed affidavit of an attorney or others. *See* People v. Richards, 17 AD3d 136 (1st Dept. 2005).

Where a defendant has an ability to raise a ground or issue as the basis for a motion to set aside a verdict and fails to do so, the Court may deny the motion, without a hearing, for failure to so act. CPL §440.10(3)(c). *See*, People v. Thomas, 147 AD2d 510 (2nd Dept. 1989); People v. Cortez, 158 AD2d 611 (2nd Dept. 1990); People v. Dover, 294 AD2d 594 (2nd Dept. 2002). Significant in this determination is whether the defendant had access to the information alleged in the subsequent motion at the time he filed his initial motion. *See* People v. Lawrence, 38 Misc.3d 1204(A); (Sup. Ct., Bronx Cty. 2012).

This is defendant's second motion to vacate his judgement of conviction pursuant to CPL Article 440. There are no facts presented in the current motion, related to the issue of coercion, that were not known to defense at the time of his first motion in 2004. In fact, affidavits relied upon for the current motion were drafted and utilized in the first motion already decided by the Courts. There being nothing new before this Court related to the factual allegations espoused herein, this Court questions why such arguments were not previously raised by defense especially in light of the fact that Defendant has been represented by counsel of his choosing since his release from incarceration. To now argue that an "actual innocence" hearing, which is granted in this matter, can be used as a gateway to these previously silent arguments is disingenuous and makes a mockery of the criminal justice system that sets forth procedures to maintain an orderly, fair and just resolution of matters before it.

Moreover, uncontroverted facts alleging coercion in the form of a detailed affidavit by the attorney or another is missing in this matter. The evidence before this Court is the exact opposite. N. Scott Banks advised the Hon. F. Dana Winslow that he has "repeatedly maintained Judge Boklan presided over the Friedman matter fairly." Defense Exhibit A. Judge Boklan, in her **complete** transcript to the movie producers of "Capturing the Friedmans" states on numerous occasions her belief in defendant's guilt – based on her reading of the grand jury testimony. She likewise states, "Certainly, at trial, I would not have permitted the media to be present." People's Exhibit 4, Appendix 000646. She continues with her belief that the case changed from trial posture to plea posture after the defense learned that Ross Goldstein had agreed to cooperate. Id. at 000659. She speaks of the "terrible sadness" that she felt towards defendant because of everything she learned he had been through while still believing he was a "menace to society." Id. at 000664-665, 691. She referenced a pre-sentence report and a pre-sentence memorandum that detailed admissions by the defendant. Id. at 000661. She acknowledged that she believed the sentence that defendant received was harsh (Id. at 000693) while appreciating that the victims' families felt it was lenient. Id. at 000730. She spoke on two occasions about the potential exposure after a trial. In one instance she surmised what the defendant's attorney may have said about a sentence of "up to 50 years" (Id. at 000671); later in the interview she explained her practice regarding same stating,

> "Like an attorney will say to me, "if my client goes to trial, as opposed to taking this plea, are you gonna punish them with a greater sentence?" And I say, "I don't punish him for going to a trial. But once I hear– once I hear what really happened – or if your client commits perjury – or, anything that can happen during the course of – of a trial, who knows what I'm gonna sentence him."" Id. at 000728.

There is not a single reference in this entire transcript that depicts Judge Boklan's desire to have media present during a trial; to give the defendant a certain sentence should he go to trial; to have discussed such a sentence in this matter with the defendant's attorney or her desire for a plea of guilty as opposed to a trial, although she was happy for the children that they did not have to testify and happy for herself that she did not have to "listen to what happened to the children." Id. at 000727.

Peter Panaro's undated affirmation is likewise void of any details related to the issue of coercion from the Court. While the affirmation details the third Indictment's genesis based on defendant's failure to take a plea, those statements were directed at the NCDAO. In fact, the affirmation details fair dealing by Judge Boklan when she refused to revoke the defendant's bail upon the unsealing of the third Indictment. Defense Exhibit LL at para. 5-6. The affirmation details information related to Brady concerns but not judicial coercion. Importantly, the affirmation states that the attorney would not allow the defendant to plead guilty unless he in fact was guilty while later seeming to proclaim defendant's innocence. The Second Circuit points out that"Panaro's insistence on an admission of guilt as a condition to agreeing to representing him in

the guilty plea is difficult to reconcile with these cases." Friedman v. Rehal, 618 F.3d 142 (2010) at footnote 1. This Court has the benefit of the transcript of the taped meeting between Panaro and the defendant two days prior to his entering a guilty plea. It details the evidence that Panaro had in support of a trial, specifically, the "Gary Meyers" interview information, his viewing of the pornographic materials in the case, his personal interviews with Sgt. Galasso and Det. Hatch and his conversations with Ross Goldstein's attorney related to his cooperation. He detailed the numerous meetings the two had to discuss the defense that the children were not abused and none of the allegations actually happened in addition to the defense of coercion from the defendant's father, the defense of "mass hysteria" and the defense of insanity and multiple personalities. It detailed the numerous doctors/ psychologists that the defendant saw at the behest of Panaro and the fact that a meeting occurred between defendant and a "prominent appeals lawyer" to act as a legal advisor on the case. It details defendant's efforts to obtain legal opinions from Barry Slotnick (who refused to take the case) and William Kuntsler (who did not reply) in addition to his interviewing approximately thirty-four (34) attorneys before choosing Panaro to represent him. It speaks of the plea bargain in great detail in addition to stating that "Judge Boklan has indicated that for each one of the charges that you are convicted of, she would **consider some** consecutive time." Emphasis added. Panaro went on to explain that regardless of consecutive time, the maximum sentence the defendant could get was forty (40) years under New York law. He continues by explaining certain aspects of the trial, including the right to remain silent, cross-examination and the People's burden of proof. He talks about the rights that are waived by a plea of guilty and that the plea must be voluntary. Panaro advises the defendant that he must tell the court the truth and states that the defendant would have to say he put his "penis into the anus of little boys" and the defendant corrects him and says that he would have to say that "I put my penis to the anus of little boys." He discusses the fee arrangement for representation and that there would be no increased cost for a trial and the limited appealable issues that still remain post plea and sentence. He detailed the fact that the defendant took a lie detector test at the office of Richard Arthur and that the defendant was told that the test showed that the defendant was not telling the truth. He further details that the defendant discussed pleading guilty with his numerous therapists and his family and the many reasons why the defendant has chosen to plead guilty. Panaro closes the interview with a conversation with defendant's mother and gives both parties a chance to ask questions. *See* People's Exhibit 2.

A careful review of both of these exhibits from Peter Panaro fails to show any evidence of judicial coercion such that the plea of guilty should be set aside. Significant to this Court is that Panaro was fully aware of the issue of coercion as he discussed it as a possible defense. Panaro had ample opportunity in this interview and in his affirmation to state, even once, that the Judge was being harsh, difficult, unfair, unreasonable or even overzealous. He said nothing. This evidence does not provide the legal support needed for the Court to either grant the motion to dismiss or to include same in a hearing.

It is evident that this issue of judicial coercion could have and should have been raised previously when Judge Boklan was alive to be heard, under oath, as to what she said and did. Because there was never an appeal on this matter until after the release of the movie "Capturing

the Friedmans," there are no plea or sentence minutes available. As far as this Court is aware, there are no minutes of any of the proceedings. This Court will not second guess that which it is factually impossible to determine as the main witness to this issue is unavailable and the delay to raise same, while the witness was alive, falls at the feet of the defendant. The motion to overturn the conviction based on judicial coercion or to include same in the "actual innocence" hearing is denied.

CONCLUSION

Based on the above, the Defendant's motion to overturn his convictions and dismiss the underlying Indictments is denied.

Moreover, it is **ORDERED,** that a hearing to determine whether the Defendant is actually innocent is to be commenced on January 5, 2015, or as soon thereafter as the Parties agree.

This constitutes the Decision and Order of the Court.

SO ORDERED.

ENTER

Dated: December 23, 2014

Teresa K. Corrigan

TERESA K. CORRIGAN, AJSC