

COUNTY COURT, NASSAU COUNTY

CRIM. TERM: PART IV  
MOTION CAL. C-11  
INDICTMENT NOS. 67104, 67430, 69783

P R E S E N T:

HON. RICHARD A. LAPERA, County Court Judge

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PEOPLE OF THE STATE OF NEW YORK	:	KATHLEEN M. RICE
	:	District Attorney
	:	Nassau County
	:	Mineola, New York
	:	By: Judith R. Sternberg, Esq.
-against-	:	
	:	Attorney for the Defendant
	:	Ronald L. Kuby, Esq.
	:	740 Broadway, 5 <sup>th</sup> floor
	:	New York, NY 10003
JESSE FRIEDMAN,	:	
Defendant	:	

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The defendant, JESSE FRIEDMAN, by his attorney, Ronald L. Kuby, Esq., has brought a motion seeking an Order vacating the defendant's judgment of conviction pursuant to CPL Section 440.10. The District Attorney, by Judith Sternberg, has opposed this application. The defendant has submitted a reply to the opposition.

On December 20, 1988 the defendant entered pleas of guilty to seventeen counts of Sodomy in the First Degree, class B violent felonies, one count of Use of a Child in a Sexual Performance, a class C felony, four counts of Sexual Abuse in the First Degree, class D violent felonies, one count of Attempted Sexual Abuse in the First Degree, a class E felony and two counts of Endangering the Welfare of a Child, class A misdemeanors. This plea was taken in satisfaction of three indictments which had charged the defendant with 124 counts of Sodomy in the First Degree, one count of Sodomy in the Second Degree, 19 counts of Sexual Abuse in the First Degree, one count of Sexual Abuse in the Second Degree, one count of Attempted Sexual

Abuse in the First Degree, 6 counts of Use of a Child in a Sexual Performance, and 69 counts of Endangering the Welfare of a Child. The defendant was sentenced on January 24, 1989 on each count of Sodomy in the First Degree, to an indeterminate term of incarceration with a minimum term of six years and a maximum term of eighteen years; on Use of a Child in a Sexual Performance, to an indeterminate term of imprisonment with a minimum term of five years and a maximum term of fifteen years; on each count of Sexual Abuse in the First Degree, to an indeterminate term of imprisonment with a minimum term of two and one-third years to a maximum of seven years; on Attempted Sexual Abuse in the First Degree to an indeterminate term of incarceration with a minimum term of one and one-third years to a maximum of four years; and on each count of Endangering the Welfare of a Child to one year. These sentences were to run concurrently with each other. (Boklan, J.). No appeal was filed.

Defendant now seeks to vacate these convictions on the ground that he was not provided with exculpatory and/or impeachment information prior to the entry of his guilty pleas. Specifically, defendant contends that the method of questioning utilized by the police during their investigation and interrogation of the minor victims should have been provided to him, as well as any statements that were made by any victims initially denying any sexual contact by the defendant and his father.

The basis for defendant's argument is the movie "Capturing the Friedmans", a copy of which is annexed as an exhibit to defendant's motion papers, and information gleaned from various sources during the making of that movie.

#### **WAIVER OF CLAIM**

The People argue that the defendant waived any claim regarding any Brady violation when he entered his pleas of guilty. In support of their position the People rely on the United

States Supreme Court decision in United States v. Ruiz, 536 U.S. 622 (2002), as well as the New York State Supreme Court, Second Department cases of People v. Knickerbocker, 230 AD2d 753 (2d Dept. 1996), People v. Thompson, 174 AD2d 702 (2d Dept. 1991) and People v. Day, 150 AD2d 595 (2d Dept. 1989).

The defendant, however, argues that this Court should adopt the rationale of the United States Court of Appeals for the Second Circuit as discussed in United States v. Avellino, 136 F.3d 249 (2d Cir. 1998), Brown v. Berbary, 2004 WL 1570258 (W.D.N.Y. 2004) and United States v. Hudak, 2003 WL 221170606 (S.D.N.Y. 2003), and the New York State Supreme Court Third Department cases of People v. Ortiz, 127 AD2d 305 (3<sup>rd</sup> Dept. 1987) and People v. Armer, 119 AD2d 930 (3<sup>rd</sup> Dept. 1986).

After a review of the case law submitted by the parties and a search for additional law on this subject, it is the opinion of this Court that the defendant is not entitled to have his convictions vacated on the allegation that material impeachment evidence was not disclosed to him prior to the entry of his pleas. United States v. Ruiz, supra; People v. Knickerbocker, supra. Defendant has provided no examples of information that would be considered as evidence that would have established defendant's "factual innocence" but rather is in the nature of impeachment information. United States v. Ruiz, supra, at 631. As Justice Thomas stated in his concurring opinion in United States v. Ruiz, supra, at 634, "the principle supporting Brady was avoidance of an unfair trial. That concern is not implicated at the plea stage regardless."

### **DEFENDANT'S CLAIMS OF BRADY VIOLATIONS**

#### **FAILURE TO ADVISE DEFENDANT REGARDING INTERVIEW TECHNIQUES UTILIZED BY THE POLICE**

This Court is of the opinion that the defendant did, in fact, have knowledge of the

interview techniques used by the police. Defendant's trial counsel was aware of such method by his own admission in the affirmation annexed to defendant's application. Specifically, counsel discusses a tape of an interview that he had seen prior to the entry of defendant's guilty pleas and his concern regarding the questioning of that young man by the police. The opportunity to litigate that issue was available at that time, but counsel did not pursue the matter.

#### FAILURE TO ADVISE DEFENDANT REGARDING HYPNOSIS OF VICTIM

Defendant refers to an interview done by the producer of the movie with "Gregory Doe" who mentioned that he had been hypnotized before he remembered any information about the molestation. However, a review of that entire interview reveals that this victim was quite conversant about the molestation from the first time that the police arrived at his door. Whether he subsequently remembered further details and events after undergoing hypnosis is not at issue here nor relevant to this application. The therapist treating him when this all occurred has submitted an affidavit stating that she did not utilize hypnosis in treating "Gregory Doe".

#### FAILURE TO ADVISE DEFENDANT REGARDING VICTIMS' INITIAL CLAIMS OF "NOTHING HAPPENED"

The defendant has offered affidavits from two individuals who claimed that they told the police that nothing happened. However, as none of the charges in any of the three indictments, following motion practice, pertained to these people, it is improbable that defendant would not have entered pleas of guilty if he had had that information. It should also be noted that not only did this defendant admitted his guilt to these crimes under oath before the Court, he admitted his commission of these crimes to the probation department and went on national television and admitted his guilt.

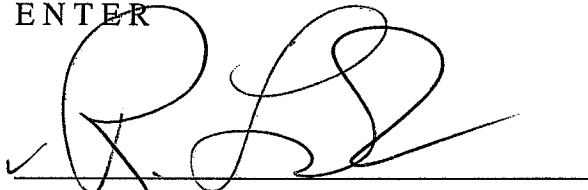
Accordingly, based upon the foregoing, the defendant's application is denied. No hearing is necessary as no question of fact is at issue since the requested relief is unavailable due to the entry of defendant's pleas of guilty as noted.

This shall constitute the Decision and Order of this Court.

So Ordered

Dated: January 6, 2006

ENTER



HON. RICHARD A. LAPERA, J.C.C.