



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETTITIA JAMES
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL
DIVISION OF APPEALS & OPINIONS

Telephone (518) 776-2054

March 20, 2019

Hon. Robert D. Mayberger
Clerk of the Court
Appellate Division, Third Department
P.O. Box 7288, Capitol Station
Albany, New York 12224

Re: *People ex rel. De Los Santos v. Collado*
Return Date: March 25, 2019

Dear Mr. Mayberger:

I write to respond to the above-referenced application for a writ of habeas corpus. For the following reasons, the Court should decline to issue the writ.

Petitioner Miguel De Los Santos is in the custody of the Department of Correctional Services and Community Supervision pursuant to a December 2014 sentence and commitment order. He is serving a controlling sentence of 25 years to life for murder in the second degree, kidnaping in the first degree and two counts of unlawful imprisonment in the first degree. *See* Petition, Ex. A.

Petitioner claims that he is entitled to immediate release because of various alleged defects in the underlying criminal proceeding. Specifically, he claims that the accusatory instrument was insufficient to confer jurisdiction; the indictment was not signed by the Grand Jury

foreman; the Grand Jury did not vote to indict him; he was not arraigned in a timely manner; he was illegally arrested and illegally extradited; and he was convicted on a different theory than that set forth in the indictment. *See* Petition. Based on these allegations, the court should decline to issue the writ.

It is well-settled that habeas corpus relief does not lie where the issues sought to be raised were or could have been raised on direct appeal or by way of a C.P.L. article 440 motion. *See, e.g., People ex rel. Smith v. Artus*, 153 A.D.3d 1557, 1558 (4th Dep't 2017); *People ex rel. Johnson v. Fischer*, 69 A.D.3d 1100 (3d Dep't), *lv. denied*, 14 N.Y.3d 707 (2010); *People ex rel. Brown v. Artus*, 64 A.D.3d 1064 (3d Dep't), *lv. denied*, 13 N.Y.3d 709 (2009); *People ex rel. Douglas v. Vincent*, 67 A.D.2d 587 (2nd Dep't 1979), *affirmed*, 50 N.Y.2d 901 (1980).

Here, petitioner's various challenges to the indictment and the manner in which he was arrested and prosecuted are issues that can be raised on direct appeal or in a motion pursuant to C.P.L. article 440. *See People ex rel. Golston v. Kirkpatrick*, 153 A.D.3d 1498 (3d Dep't 2017), *lv. denied*, 31 N.Y.3d 903 (2018); *People ex rel. Peoples v. New York State Dept. of Corr. Servs.*, 117 A.D.3d 1486, 1487 (4th Dep't), *lv. denied*, 23 N.Y.3d 909 (2014); *People ex rel. Burr v. Rock*, 93 A.D.3d 977 (3d Dep't), *lv. denied*, 19 N.Y.3d 806 (2012). In addition, petitioner has not set forth any reasons warranting a departure from traditional, orderly proceedings. *People ex rel. Brown v. Griffin*, 123 A.D.3d 1281, 1282 (3d Dep't 2014), *lv. denied*, 25 N.Y.3d 902 (2015); *People ex rel. Cole v. Graham*, 147 A.D.3d 1350, 1351 (4th Dep't), *lv. denied*, 29 N.Y.3d 914 (2017).

Accordingly, this Court should decline to issue the writ because petitioner's challenge to the legality of his detention is based on issues that he can raise on direct appeal or in an C.P.L. article 440 motion.

Respectfully submitted,


FRANK BRADY
Assistant Solicitor General

cc: Miguel De Los Santos
#14-A-5516
Shawangunk Correctional Facility
P.O. Box 700
Wallkill, New York 12589

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION THIRD DEPARTMENT

-----X
THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. MIGUEL DE LOS SANTOS,

Petitioner,

Reply to the Return
of the Writ
Index No. 527912

vs.

JAIFA COLLADO, SUPERINTENDENT
SHAWANGUNK CORRECTIONAL FACILITY,
Respondent.

March 24, 2019

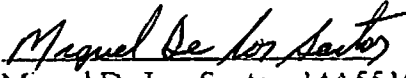
-----X
REPLY BRIEF ON BEHALF OF PETITIONER MIGUEL DE LOS SANTOS

1. The Court is and was stripped of jurisdiction and relator is entitled to immediate release. No person shall be prosecuted except for an offense as it described by the Legislature, therefore, any action by a Grand Jury other than those specifically authorized by statute are legally invalid. The grand jury cannot usurped and unauthorized power into a legal act.
2. The power and duties of the grand jury are defined by law. They are not above the law. They do not have a legal right about the law. In this state the grand jury derives its power from the constitution and acts of the legislature (N. Y. Const art I, §6, code crim pro §§§§ 223, 295, 252, 253)(see also *Matter of Bonston*, 133 Misc. 620). Section 22 of the Penal Law provides that not act or omission shall be deemed criminal except by statute.
3. The prosecution was without statutory authority to present this case to the grand jury and the grand jury lack all authority to issue an indictment when no crime had been charged. The prosecution cannot create any right where none exist. The grand jury is not an arm or instrument of the district attorney but are creature of the statute which should be strictly construed. Neither the court nor its arm, the grand jury may take onto itself an authority or power not granted by the constitution or legislature.
4. The grand jury was without power to file an indictment, such as here, where although no crime charged, that alleged indictment no. 3444-2002 is fake as well the warrant of arrest, that's

why that alleged indictment was not ordered filed as sealed. CPL § 210.10(3), as well as the warrant of arrest was not ordered by a judge pursuant to CPL § 120.20, the function of the grand jury ends, when it determines that no crime has been committed and therefore the court is and was stripped of jurisdiction and relator is entitled to immediate release.

Dated: March 24, 2019
Walkill, New York 12589

Respectfully submitted,


Miguel De Los Santos, 14A.5516
Shawangunk Corr Fac.,
P.O.Box 700
Walkill, New York 12589

To: Supreme Court Appellate Division Third Department
Clerk Robert D. Mayberger
Capital Station, P.O. 7288
Albany, New York 12402-1800

Jaifa Collado, Superintendent of Shawangunk Correctional Facility
200 Quick Road
Walkill, New York 12589

Letitia James, Attorney General
Department of Law
The Capital
Albany, New York 12224