EXHIBIT -B-

LETTERS BY EDWARD V. SAPONE, APPELLATE COUNSEL DATED MAY 1, 2019; AUGUST 8, 2014; AND JULY 14, 2015.

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May 1, 2019

Miguel De Los Santos
DIN: 14A5516
Shawangunk Correctional Facility
200 Quick Road
P.O. Box 700
Wallkill, New York 12589

Re: *People v. Miguel De Los Santos*
Ind. No.: 3444N/2002

Dear Miguel:

I've had an opportunity to review the additional issues that you'd like included in your CPL §440.10 motion and conducted extensive research. I've divided the issues into three categories, which I will discuss in detail below.

Jurisdictionally Insufficient Indictment

You'd like to argue in the CPL § 440.10 motion that the indictment was jurisdictionally defective because most of the elements from the statutory definitions are missing.

While I agree with you that the indictment provided only minimal information, and may not even have specifically listed each of the elements of the charged crimes, it was nonetheless jurisdictionally sufficient. An indictment does not need to list all of the elements of the charged crimes. An indictment is jurisdictionally adequate if it identifies the Penal Law title of the crime and incorporates the elements through the title or reference to the Penal Law section of the crime charged. See People v. Ray, 71 N.Y.2d 849, 850 (1988); People v. Cohen, 52 N.Y.2d 584, 586 (1981).

An indictment is jurisdictionally defective only if it does not charge the defendant with the commission of a particular crime. See People v. Iannone, 45 N.Y.2d 589, 600 (1978). An indictment is a jurisdictionally defective indictment only if it accuses a defendant of performing acts that "simply do not constitute a crime," Id. at 600, or "fails to allege that the defendant committed acts constituting every material element of the crime charged." People v. D'Angelo, 98 N.Y.2d 733, 734-35 (2002).

Here, each count in the indictment included both the Penal Law section and the title of the offense:

- Count One charged murder in the second degree under Penal Law §125.25(3);
- Count Two also charged murder in the second degree under Penal Law §125.25(3);
- Count Three charged kidnapping the first degree under Penal Law §135.25(1);
- Count Four charged unlawful imprisonment in the first degree under Penal Law §135.10;
- Count Five also charged unlawful imprisonment in the first degree under Penal Law §135.10;
- Count Six charged burglary in the first degree under Penal Law §140.30(1);
- Count Seven charged criminal sale of a controlled substance in the first degree under Penal Law §220.43(1); and
- Count Eight charged conspiracy in the second degree under Penal Law §105.15.

No more was required for a jurisdictionally sufficient indictment. While the indictment here contained only minimal facts, those facts were enough, because those facts alleged "where, when and what the defendant did." Iannone, 45 N.Y.2d 598.

You also point out that the voluntary disclosure form did not supplement the indictment with any acts, facts, or crimes. I agree with you. But any complaint that the indictment, bill of particulars, or voluntary disclosure form fails to include sufficient facts must be raised at the time those pleadings are filed.

Here, there is no suggestion in the record that your attorney complained that the indictment failed to provide adequate notice of the charges against you or requested a more detailed bill of particulars. Absent such a complaint, the adequacy of the indictment cannot be raised on appeal or in a post-conviction motion. See, e.g., People v. Wiredo, 138 A.D.2d 652, 654 (2d Dep't 1988)("If the defendant did not avail himself of the opportunity to move for a bill of particulars requesting more specificity in ... the indictment, he may not be heard to complain at this juncture" [i.e., following his conviction after trial]).

While there is no doubt that your trial attorney could have requested a bill of particulars, it would be impossible to show that you were prejudiced by that failure, a necessary component of any ineffective assistance of counsel claim.

Invalid Arrest & Indictment

You'd like to argue in the CPL §440.10 motion that the indictment and arrest warrant were improper because the only way the prosecution could have proceeded without an arrest was by sealed indictment under CPL §210.10(3).

You are correct that because you were not arrested before your indictment, and there was no felony complaint, CPL §210.10 applied. But there is nothing in the record to suggest that CPL §210.10 was not followed. CPL §210.10(3) permits the direct presentment of an indictment, that is, the prosecutor can obtain an indictment even if the defendant has not been arrested. In that case, once the indictment is obtained, the superior court must order that the indictment be filed

as a sealed instrument and an arrest warrant ordered. There is nothing to suggest that the indictment was not ordered sealed by the Supreme Court.

Even if the procedural prerequisites of CPL §210.10 were not followed, they cannot be challenged now. A defendant's arraignment, without an objection to the jurisdiction of the court, secures the jurisdiction of the Supreme Court over both the defendant and the resulting prosecution, even if the provisions of CPL §210.10 for obtaining personal and subject matter jurisdiction over the defendant and the case are not followed. See People v. James, 147 A.D.3d 1211, 1212 (3d Dep't 2017). The validity of an arrest is immaterial to the validity of a subsequent conviction. See People v. Grant, 16 N.Y.2d 722 (1965). A defendant's participation in the proceedings without objection is a submission to the jurisdiction of the court. See People v. Golston, 13 A.D.3d 887 (3d Dep't 2004).

Because your case was presented to a grand jury in 2002, there was no need for the prosecution to re-present it upon your arrest, that is, because you were indicted in 2002, the court was not required to indict you again in 2013.

You indicated that because your name was "scratched" from the indictment, the prosecution could not proceed against you. The 2002 indictment not only charged you, but it also charged Rafael De Los Santos, Juan Pilne, and Ellerman Valverde. Your name was redacted from the **copy** of the indictment contained in the Supreme Court file because you had not been arrested, and the cases against each of the four other co-defendants proceeded without you. Redacting your name on the copy was consistent with the fact that the indictment was sealed as to you. That your name was redacted or scratched on this copy of the indictment does not mean that you were removed from the indictment, or that the indictment ceased to be valid as against you. It merely means that your name was removed from this **copy**. Even if it could have been argued that scratching your name from the indictment rendered it somehow invalid (and I don't believe it could), that challenge could only have been made at the time you were arraigned on the indictment following your arrest in 2013.

The Arrest Warrant

You've also indicated that you want to challenge the arrest warrant in the CPL §440.10 motion.

The problem with such a claim based on the arrest warrant that you provided is that the copy that you provided does not appear to be authentic, or appears to have been altered. You are correct that the warrant is purportedly authorized by Flora Duffy, as a Justice of the Supreme Court, and there was no Supreme Court Justice by that name in 2002. We have verified with the Office of Court Administration that there has never been a lawyer or a judge in New York State by that name.

I'm concerned, however, that the copy of the arrest warrant that you provided is not authentic, or has been altered, because, among other things, the title of the document states that it is an arrest warrant from the "Supreme Court of the City of New York." There is no Supreme

Court of the City of New York, only a Supreme Court of the State of New York, and a Criminal Court of the City of New York.

The fact that the court issuing the warrant is misidentified, together with the fact that a fictitious judge is listed as having ordered the warrant, suggests that the document was altered at some point. If you're able to provide me with further information about where this arrest warrant originated, perhaps this is something that can be investigated further. If this is actually the warrant, and was endorsed by a non-existent judge, then perhaps this might present a claim, but it does not appear to be an authentic document.

I recognize that you believe that the proceedings against you were unfair and unlawful for the reasons that you've pointed out. Unfortunately, the law appears to be against you on the issues that you have identified. I am ethically bound not to raise any claims on your behalf that have no legal support. Further, including claims in your motion that are without any legal basis would also doom any chance you have of prevailing on the CPL §440.10 motion that I've prepared, and of which you have a copy.

Kindly get back to me with any questions. In particular (1) provide me with any further information you can about where your copy of the arrest warrant originated; and (2) if you disagree with my assessment of the issues addressed above, provide any case law you believe supports your challenges to the indictment and the jurisdiction of the court. As I've explained, I'm eager to include any bona fide issues that I can on your behalf, but I need law to support them.

If you accept my analysis of the issues, which I reached only after careful research, I would ask that you please return to my office the affidavit that I sent to you back on January 24, 2019. As a reminder, I need you to sign the affidavit with a notary public before sending it back. We need to include your affidavit when we file the final CPL §440.10 motion with the Court.

Sincerely,

Edward V. Sapone
Edward V. Sapone

EDWARD V. SAPONE, LLC

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BY FACSIMILE

August 8, 2014

Hon. Ruth Pickholz
Supreme Court Justice
New York County Supreme Court
Part 66
111 Centre Street, Room 1047
New York, NY 10013

Re: *People v. Miguel Dellos Santos*
Ind. No.: 3444/2002

Judge Pickholz:

I am newly retained counsel to Defendant Miguel Dellos Santos in the above referenced case. I was retained by Mr. Dellos Santos's family today for post-trial motions, sentencing and appeal. I filed my notice of appearance in the case this morning.[1]

I left a message for the assigned Assistant District Attorney David Drucker, who I understand is on trial, and I spoke with Mr. Dellos Santos's trial counsel, Norman Williams, Jr., who informed me that the sentencing hearing, scheduled for Monday, August 11, 2014, has been adjourned to September 10, 2014.

I write to inform the Court of my intention to file post-trial motions on behalf of Mr. Dellos Santos in advance of sentencing.

I look forward to addressing the Court on September 10, 2014.

Respectfully submitted,

/S/ Edward V. Sapone
Edward V. Sapone

cc: Mr. David Drucker, Esq.
Assistant District Attorney

[1] I'm attaching a courtesy copy for the Court's file.

EDWARD V. SAPONE, LLC

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VIA REGULAR MAIL

July 14, 2015

Miguel De Los Santos
DIN: 14A5516
Auburn Correctional Facility
135 State Street
Auburn, New York 13024

Re: *People v. Miguel De Los Santos*
Ind. No.: 3444/2002

Dear Miguel:

As you know, we submitted our Notice of Appearance for you.

We are drafting our brief which will include, among other issues, whether the verdict was repugnant, the sufficiency of the evidence, any unfair prejudice resulting from the evidence of your alleged involvement in narcotics offenses, the process by which you were identified and any erroneous jury instructions.

Please write us with your thoughts on the potential appellate issues, and any issues that would support a future claim of Ineffective Assistance of Counsel against your trial counsel.

We are mailing you three separate packages that contain all documents we have regarding your case.

Warm Regards,

/S/ Edward V. Sapone
Edward V. Sapone

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